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GUILFORD CO, NC FEE \$179.00

PRESENTED & RECORDED:

09-27-2007 11:42:20 AM

JEFF L. THIGPEN

REGISTER OF DEEDS

BY: WILEY L COUSIN

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**PG: 1171-1226**

**DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS FOR  
TURLINGTON TOWNHOMES**

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Prepared by and after recording mail to:

**Jeff Dunham  
NEXSEN PRUET ADAMS KLEEMEIER, PLLC  
701 Green Valley Road  
Suite 100  
Greensboro, North Carolina 27408**

NPGBO1:717956.3-DOC-(JDUNHAM) 035943-00002

NORTH CAROLINA  
GUILFORD COUNTY

DECLARATION OF COVENANTS, CONDITIONS  
AND RESTRICTIONS FOR  
TURLINGTON

Turlington, LLC, a North Carolina limited liability company, hereinafter referred to as "Declarant," does hereby make, declare and establish this Declaration as and for the plan of dwelling ownership of Turlington Townhomes, being the property and improvements hereinafter described.

**WITNESSETH:**

WHEREAS, Declarant is the owner of the fee simple title to that certain real property situated in Guilford County, North Carolina, which property is more particularly described on Exhibit "A" attached hereto and incorporated herein by reference, together with all buildings and improvements now or hereafter constructed or located thereon, and all rights, privileges, easements and appurtenances belonging to or in any way pertaining to said real property.

NOW, THEREFORE, Declarant, as the owner of said property, hereby declares that all of the Property described on **Exhibit A** 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 the Property, and which shall run with the 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**

Definitions. As used herein, the following words and terms shall have the following meanings:

1.1 Association. Turlington Homeowners Association, Inc., a nonprofit corporation, its successors and assigns.

1.2 Board. The Executive Board of the Association.

1.3 Bylaws. The Bylaws of the Association which are hereby incorporated herein and made a part hereof by this reference, and attached as Exhibit B.

1.4 Common Elements. All real property together with all improvements now or hereafter constructed thereon, owned by the Association for the common use and enjoyment of the Owners. The Common Elements to be owned by the Association at the time of the conveyance of the first lot is described as follows:

All of the land designated as "Common Elements" as shown and described on the plat entitled "Final Plat, Phase 1 Units 1-5 and 6-11 Turlington

Townhomes,” which is recorded in the Office of the Register of Deeds of Guilford County, North Carolina, in Plat Book 171, Page 82.

1.5 Common Expenses. Expenditures made or liabilities incurred by or on behalf of the Association, including but not limited to, any allocations to reserves and expenses of administration, maintenance, repair or replacement of the Common Elements.

1.6 Declarant. Turlington, LLC, a North Carolina limited liability company, its successors and assigns, if such successors and assigns should acquire more than one undeveloped lot from Declarant for the purpose of development.

1.7 Declarant Control Period. The period commencing on the date hereof and continuing until the earliest of the following:

(a) the date ten (10) years after the date that this Declaration is recorded in the Guilford County Register of Deeds, or

(b) the date one hundred twenty (120) days after the Declarant has conveyed seventy-five percent (75%) of the Lots (including Lots annexed by Supplemental Declaration) to Lot Owners other than a Declarant, or

(c) seven (7) years after the first Lot was conveyed to a Lot Owner.

1.8 First Mortgage and First Mortgagee. A First Mortgage is a mortgage or deed of trust which has been recorded so as to give constructive notice thereof, and which is a first lien on the Lots described therein. A First Mortgagee is the holder, from time to time, of a First Mortgage as shown by the records of the Office of the Register of Deeds of Guilford County, North Carolina, including the Federal National Mortgage Association and a purchaser at foreclosure sale upon foreclosure of a First Mortgage until expiration of the mortgagor's period of redemption. If there is more than one holder of a First Mortgage, they shall be considered as, and act as, one First Mortgagee for all purposes under this Declaration and the Bylaws.

1.9 Lot. Any numbered plat of land shown on any recorded subdivision map of the Property but excluding any Common Elements and dedicated streets.

1.10 Lot Owner. The person or persons, including the Declarant, owning a Lot in fee simple.

1.11 Member. Every person or entity who holds membership in the Association.

1.12 Occupant. Any person or persons in possession of a Lot, including Lot Owners, the family members, lessees, guests and invitees of such person or persons, and family members, guests and invitees of such lessees.

1.13 Person. A natural person, corporation, partnership, trust or other legal or commercial entity, or any combination thereof.

1.14 Property. The real estate described on Exhibit A, together with any real estate as may hereafter be brought within the jurisdiction of the Association, together with all buildings

and improvements now or hereafter constructed or located thereon, and all rights, privileges, easements and appurtenances belonging to or in any way pertaining to said real estate.

1.15 Rules and Regulations. The rules and regulations of the Association promulgated by the Executive Board from time to time.

1.16 Living Unit. A portion of a building situated upon the Property and designed and intended for separate occupancy as a residence.

## ARTICLE II

### Property Rights

#### 2.1 Owner's Easements of Enjoyment.

(a) The Common Elements shall be, and the same are hereby declared to be, subject to a perpetual non-exclusive easement in favor of all Lot Owners and Occupants for their use and the use of their immediate families, guests and invitees, for all proper and normal purposes, and for the furnishing of services and facilities for which the same are reasonably intended, for the enjoyment of said Lot Owners. Notwithstanding the foregoing or anything provided herein to the contrary, the Association and Board shall have the right to establish the Rules and Regulations pursuant to which a Lot Owner or Occupant, his family, guests and invitees, may be entitled to use the Common Elements, including specifically regulations making permanent or temporary assignments of parking spaces and regulating the use of parking areas. The easement of enjoyment shall be appurtenant to and pass with title to every lot subject to the following:

(i) 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 (Declarant makes no representation that any recreation facility will be constructed) situated upon the Common Elements;

(ii) the right of the Association to suspend the voting rights and right to use of the recreational facilities, if any, by a Lot Owner and Occupant for any period during which any assessment against his Lot remains unpaid; and, for a period not to exceed sixty (60) days, for any infraction of its published rules and regulations;

(iii) the right of the Association to dedicate or transfer all or any part of the Common Elements to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the Members. No such dedication or transfer shall be effective until such time as an instrument signed by at least two-thirds (2/3) of each class of Members, agreeing to such dedication or transfer, has been recorded;

(iv) the right of the Association, in accordance with its Articles and Bylaws, to borrow money for the purpose of improving the Common Elements; and

(v) Subject to the prior written consent of VA or FHA in the event VA or FHA insured loans have been obtained and secured by one or more Lots, the right of the

Association to exchange portions of Common Elements with the Declarant for substantially equal areas of the Properties for the purpose of eliminating unintentional encroachments of townhouses or other improvements onto portions of the Common Elements.

(b) Encroachments. In the event that, by reason of the construction, reconstruction, rehabilitation, alteration or improvement of the buildings or improvements comprising a part of the Property, any part of any Living Unit or the Common Elements now or hereafter encroaches upon any part of any other Lot or any part of Common Elements an easement for the continued existence and maintenance of each such encroachment is hereby declared and granted and shall continue for so long as each such encroachment exists; provided that in no event shall an easement for such encroachment be created if such encroachment is detrimental to or interferes with the reasonable use and enjoyment of the Common Elements or Lots so encroached upon.

(c) Easements for Utilities. The Common Elements shall be, and are hereby, made subject to easements in favor of the Declarant (until Declarant shall have satisfied all of its obligations under the Declaration and Bylaws and all commitments in favor of any Lot Owner and the Association), the Association, appropriate utility and service companies and governmental agencies or authorities for such utility and service lines and equipment as may be necessary or desirable to serve any portion of the Property. The easements provided for by this Section 2.1 shall include, without limitation, rights of Declarant, the Association, any providing utility, any service company, and any governmental agency or authority and any of them to install, lay, maintain, repair, relocate and replace gas lines, pipes and conduits, water mains and pipes, sewer and drain lines, telephone wires and equipment, television equipment and facilities (cable or otherwise), electrical wires, conduits and equipment and ducts and vents and any other appropriate equipment and facilities over, under, through, along and on the Lots and Common Elements.

(d) Roof Overhangs and Maintenance. There is hereby reserved across and on each Lot, a distance of not more than ten (10) feet from the side lot lines, a perpetual right and easement for the purposes of the following: (i) permitting the roof of any Living Unit constructed on an adjoining Lot to overhang a distance of not more than two (2) feet over the Lot and to permit the discharge of water and ice from the overhanging roof of a Living Unit into each Lot; and (ii) permitting reasonable ingress and egress to each Lot Owner to reach and use the easement described herein. Provided, however, the right and easement described in this Section shall be utilized by Lot Owners in such a manner so as to interfere as little as is reasonably possible with the vegetation, plants, grass or other improvements within the easement or adjoining Lots.

2.2 Declarant's Easement. Declarant hereby reserves such easements through the Common Elements as may be reasonably necessary for the purposes of discharging its obligations, exercising Declarant Rights, and completing the development and construction of the Property, which easements shall exist as long as reasonably necessary for such purpose.

2.3 Easements To Run With Land. All easements and rights described in this Article II are appurtenant easements running with the land, and except as otherwise expressly provided in this Article II shall be non-exclusive and perpetually in full force and effect, and shall inure to

the benefit of and be binding upon Declarant, the Association, Lot Owners, Occupants, First Mortgagees and any other person having any interest in the Property or any part thereof.

### **ARTICLE III**

#### **Member and Voting Rights**

3.1 The Owner(s) of any Lot that is subject to a lien for assessment as described herein shall be a Member of the Association. Membership in the Association shall be appurtenant to and may not be separated from ownership of any Lot, which is subject to assessment.

3.2 The Association shall have two classes of voting membership.

**CLASS A.** Class A Members shall be all Lot Owners other than the Declarant. Class A Members shall be entitled to one (1) vote for each Lot owned. When more than one person or entity owns a Lot, all such persons or entities shall be Members. The vote or votes for such Lot shall be exercised as the Owners of a Lot determine among themselves, but in no event shall more than one (1) vote be cast with respect to any Lot.

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

(a) when the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership, provided, however, the Class B membership shall be reinstated if, after such conversion and before the time stated in subparagraph (b) below, such additional lands are annexed to the Property and brought within the jurisdiction of the Association pursuant to Article XIV, Section 14.1 of the Declaration containing a sufficient number of Lots to give the Class B Member a total number of votes (with each Lot owned by the Class B Member representing 3 votes) to exceed those of the Class A members; or;

(b) on December 31, 2014.

### **ARTICLE IV**

#### **Development Rights**

4.1 **Declarant's Right to Add Additional Real Estate.** Declarant expressly reserves the right for a period of seven (7) years from the date of recording this Declaration to add the real property described on Exhibit A-1 (the "Additional Real Estate") to the Property and to create on the Additional Real Estate, Lots and Common Elements without the consent of any Lot Owner or Mortgagee, provided that, in the event FHA or VA insured loans have been obtained to purchase Lots, FHA or VA determine that the annexation is in accord with the general plan approved from time to time by FHA or VA. All or part of the Additional Real Estate identified and described on Exhibit A-1 may be added to the Property at different times, but no assurances are made in regard to the order in which such portions may be added. Declarant is not obligated to add all of the Additional Real Estate.

4.2 Conversion of Lots to Common Elements. Declarant hereby reserves the right for seven (7) years from the date of recording of this Declaration to convert an existing Lot or Lots owned by Declarant entirely to Common Elements, without the consent of any Lot Owner or mortgagee. Declarant's right under this Paragraph 4.2 shall apply to Lots created under this original Declaration as well as to Lots which may be created on any Additional Real Estate added to the Property pursuant to Paragraph 4.1 of this Article IV, if the amendment adding such real estate so provides.

4.3 Method of Exercising Development Rights. In the event Declarant exercises any of its development rights under this Article IV, Declarant shall prepare, execute with the same formalities as a deed, and record an amendment to this Declaration in the public records of Guilford County, North Carolina, such amendment to refer specifically to the recording data identifying this Declaration.

In addition to the execution and recordation of the amendment to the Declaration described above, Declarant shall record in the public records of Guilford County either new plats and plans of the Property evidencing the changes effected by Declarant's exercise of its development rights, or new certifications of the plats and plans previously recorded if the Property continues to conform to those plats and plans.

Each Lot Owner shall be deemed by his acceptance of the deed to a Lot to have consented to the Development Rights reserved in this Article and to any amendments previously or thereafter executed by Declarant pursuant to this Article

Any and all of the Development Rights reserved under this Article IV may be exercised as to any, all or none of the real estate described in Exhibit "A" and Exhibit "A-1" of this Declaration, at different times and from time to time, and in any sequence, all in the sole discretion of the Declarant.

4.4 Applicability of Restrictions, Etc. All restrictions in this Declaration and the Bylaws affecting use, occupancy and alienation of Lots will apply to any and all additional Lots that may be created within the Additional Real Estate.

## **ARTICLE V**

### **Restrictions, Covenants and Conditions**

#### **5.1 Use Restrictions.**

(a) With the exception of temporary use of a Lot or Living Unit by Declarant as a sales office and/or model, the Lots shall be occupied and used by Lot Owners and Occupants for single-family residential purposes, including home professional uses which (i) do not use any signage that is visible from the exterior of the Lot, (ii) do not involve regular visits from public or commercial vehicles, and (iii) do not involve levels of mail, shipping, trash or storage that would unreasonably burden other Lot Owners.

(b) Living Unit Specifications. No Living Unit shall be permitted having a floor area of the main structure, exclusive of one-story open porches, of less than 1,440 heated

square feet for for a two-story dwelling. All Living Units shall be two-story. Any building erected, altered, placed or permitted to remain on a Lot shall be subject to the provisions of this Declaration relating to Architectural Control. No Lot Owner shall make any structural alterations or modifications to a Living Unit or the Common Elements, including the erection of antennas, the placement of any reflective or other material in the windows (other than draperies, blinds or ordinary shades) or other exterior attachments, without the written approval of the Association.

5.2 Signage. Declarant shall also have an easement to maintain signs on the Common Elements advertising the Property until all of the Lots have been conveyed to Lot Owners other than a Declarant. Declarant shall remove all such signs not later than thirty (30) days after all of the Lots have been conveyed to Lot Owners other than Declarant and shall repair or pay for the repair of all damage done by removal of such signs.

5.3 Hazardous Use and Waste. Nothing shall be done to or kept in any Lot or the Common Elements that will increase any rate of insurance maintained with respect to the Property without the prior written consent of the Board. No Lot Owner or Occupant shall permit anything to be done to or kept on his Lot or the Common Elements that will result in the cancellation of insurance maintained with respect to the Property, or that would be in violation of any law, or that will result in the commitment of waste (damage, abuse, or destruction) to or in his Lot or the Common Elements.

5.4 Prohibition of Renting for Transient or Hotel Purposes. No Lot Owner shall rent his Unit for transient or hotel purposes, which, for the purposes of this Declaration shall be defined as either a rental for any period less than thirty (30) days or any rental if the lessee of the Living Unit is provided customary hotel services. Each permitted lease shall be in writing, shall be for a period in excess of 30 days, and shall be subject to this Declaration, the Bylaws and any Rules and Regulations, and any failure of the lessee to comply with the terms of such documents shall be a default under the lease. Other than the foregoing restrictions, each Lot Owner shall have the full right to lease his Living Unit.

5.5 Pets. No domestic pets exceeding twenty-five (25) pounds in weight shall be allowed in the Property, except as may be provided by the Rules and Regulations promulgated from time to time by the Board or the Association or in the Bylaws. For the purposes of this paragraph, "domestic pets" shall be defined solely as dogs, cats or birds. Except for the foregoing, no other animals, livestock or poultry of any kind shall be raised, bred or kept on the Property.

5.6 Television, Aerials, Antennas and Satellite Dishes. No television antenna, radio receiver, or other similar device will be attached to or installed on any portion of the Property, except as required by the Telecommunications Act of 1996 and implementing rules therefore issued by the Federal Communications Commission and by the Association in conformity with rules or guidelines of the Federal Communications Commission; provided however, the Declarant and the Association will not be prohibited from installing equipment necessary for master antenna, security, cable television, mobile radio, or other similar systems on the Property.

5.7 Parking. No tractor, mobile home or trailer (either with or without wheels), camper, camper trailer, boat or other watercraft, boat trailer or any other recreational vehicle



shall be parked on any portion of the Common Elements. The foregoing restriction shall not apply to sales trailers, construction trailers or other vehicles which may be used by Declarant and its agents and contractors in the conduct of their business prior to completion of the Property, and shall not apply to service vehicles which are temporarily parked while service contractors are providing temporary service work on one or more Lots in the Property or on the Common Elements.

Permitted vehicles shall be parked or stored in or upon the Common Elements only in an area provided by the Association for such storage and subject to rules and regulations and fees charged by the Association, and shall not be parked or stored within any street right-of-way. Parking for each Lot shall be in the driveway located between the Lot and the street on which it fronts. No Lot Owner or Occupant shall repair or restore any vehicle of any kind upon the Property, except for emergency repairs, and then only to the extent necessary to enable movement thereof to a proper repair facility. Each parked vehicle must display a valid current license plate.

5.8 Prohibitions on Use of Common Elements. Except with specific written approval of the Board, the Common Elements shall not be used for temporary or permanent storage or supplies, personal property, trash or refuse of any kind, other than in common trash receptacles placed at the discretion of the Board, nor shall such areas be used in any way for the drying or airing of clothing, rugs or other fabrics. Entrances, sidewalks, driveways and parking areas shall not be obstructed in any way. No activities shall be carried on nor condition maintained by any Lot Owner, either on his Lot or upon the Common Elements, if such activities should despoil, or tend to despoil, the appearance of the Property. No "garage", "attic sales" or "yard sales" shall be permitted outside of a Lot. It is expressly acknowledged and agreed by all parties concerned that this section is for the mutual benefit of all Lot Owners of the Property and is necessary for the protection of the Lot Owners and is enforceable by the Board or by any one or more Lot Owners through the Board.

5.9 Nuisances. No nuisances shall be allowed upon the Property and no person shall engage in any use, practice or activity upon the Property which is noxious, offensive or a source of annoyance to Lot Owners or Occupants or which reasonably interferes with the peaceful possession and proper use of the Property by any Lot Owner and/or Occupants. No exterior speakers, horns, whistles, bells or other sound devices except security devices used exclusively for security purposes, shall be located, used or placed on the Property. All parts of the Property shall be kept in a clean and sanitary condition, and no rubbish, refuse or garbage shall be allowed to accumulate and no fire hazard shall be allowed to exist, including on the balcony or patio of any Living Unit. Any Lot Owner or Occupant who shall dump or place (or permit his family, tenants, guests or agent to do so) any trash or debris upon any portion of the Property shall be liable to the Association for the actual cost of removal thereof or the sum of \$150.00, whichever is greater, and the same shall be added to and become a part of the assessment next coming due to which the Lot Owner of his Lot is subject. No Lot Owner or Occupant shall permit any use of a Lot or of the Common Elements which will increase the rate of insurance upon the Property. The Association and its agent shall have the right to remove any item or items left outside a Living Unit, on the Common Elements or hanging from a balcony.

5.10 Lawful Use. No immoral, improper or unlawful use shall be made of the Property or any part thereof. All valid laws, zoning ordinances and regulations of governmental bodies having jurisdiction thereof shall be observed.

5.11 Rules and Regulations. In addition to the foregoing restrictions, conditions and covenants concerning the use of the Property, reasonable rules and regulations not in conflict therewith and supplementary thereto may be promulgated and amended from time to time by the Board or the Association, as more fully provided in the Bylaws.

5.12 Restrictions, Conditions and Covenants To Run With Land. Each Lot Owner and Occupant shall be subject to all restrictions, conditions and covenants of this Declaration, and all such restrictions, conditions and covenants shall be deemed to be covenants running with the land, and shall bind every person having any interest in the Property, and shall inure to the benefit of every Lot Owner.

## ARTICLE VI

### Covenant for Assessments

6.1 Creation of the Lien of Assessments. The Declarant, for each Lot Owner within the Property, hereby covenants, and each Owner of any Lot, by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) annual assessments or charges; (2) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. The Declarant and the Owner of any Lot further covenants to pay to the appropriate governmental taxing authority: (a) a pro rata share of ad valorem taxes levied against the Common Elements; and (b) a pro rata share of assessments for public improvements to or for the benefit of the Common Elements if the Association shall default in the payment of either or both for a period of six (6) months, as hereinafter provided. The annual and special assessments, together with interest, 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. The Association has the power to levy assessments against the Lots for Common Expenses. Such assessments shall be a lien on the Lots against which they are assessed, and if any payment thereof becomes delinquent, the lien may be foreclosed and the Lot sold, or a money judgment obtained against the persons liable therefor, all as set forth in the Bylaws.

#### 6.2 Personal Liability of Transferees; Statement; Liability of First Mortgagee.

(a) Each such assessment, together with interest, costs and reasonable attorney's fees, shall be the personal obligation of the Lot Owner of such Lot at the time that the assessment became due. The personal obligation for assessments which are delinquent at the time of transfer of a Lot shall not pass to the transferee of said Lot unless said delinquent assessments are expressly assumed by said transferee.

(b) Any transferee referred to in (a) above shall be entitled to a statement from the Board, pursuant to Section 6.12 below, and such transferee's Lot shall not be subject to a lien for any unpaid assessments against such Lot in excess of the amount therein set forth.

(c) Where a First Mortgagee, or other person claiming through such First Mortgagee, pursuant to the remedies provided in a deed of trust, whether by foreclosure, by deed-in-lieu of foreclosure, or assignment, obtains title to a Lot, the liability of such First Mortgagee or such other person for assessments shall be only for the assessments, or installments thereof, that would become delinquent, if not paid, after acquisition of title. For purposes hereof, title to a Lot shall be deemed acquired by foreclosure upon expiration of the applicable period of redemption.

(d) Without releasing the transferor from any liability therefor, any unpaid portion of assessments which is not a lien under (b) above or, resulting, as provided in (c) above, from the exercise of remedies in a deed of trust, shall be a Common Expense collectible from all Lot Owners, including the transferee under (b) above and the First Mortgagee or such other person under (c) above who acquires ownership of the subject Lot

### 6.3 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 Property and in particular for the acquisition, improvement and maintenance of properties, services and facilities devoted to this purpose and related to the exterior maintenance of the Living Units situated upon Lots and all walkways crossing any Lot if such walkways are constructed, or for the use and enjoyment of the Common Elements, including but not limited to, the costs of repairs, replacements and additions, the cost of labor, equipment, materials, management and supervision, the payment of assessments for the public and private improvements made to or for the benefit of the Common Elements, the payment of taxes assessed against the Common Elements, the maintenance of any Permanent Retention Pond(s) in the Common Elements as directed by the governmental office having jurisdiction for watershed protection, the maintenance of streets (whether dedicated or not) drives and parking areas within the Common Elements, the procurement and maintenance of insurance in accordance with Article IX, the payment of charges for garbage collection and water and sewer services furnished to the Common Elements, the employment of attorneys 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, roofs, paving, and any other major expense for which the Association is responsible, 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 Elements 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 Expenses.

6.4 Payment of Assessments. Assessments provided for herein shall be payable in monthly installments or such other installments as may be determined by the Board of the Association. Such assessments shall commence for each Lot conveyed by the Declarant to a Lot Owner on the first day of the first month following conveyance of such Lot. The annual assessments for Lots owned by Declarant and unoccupied as a residence shall be an amount established in accordance with this Article VI and shall commence as to a particular Lot at the time that the Living Unit on that Lot is completed and ready for occupancy.

The payment of any assessment or installment thereof shall be in default if such assessment or installment is not paid to the Association within thirty (30) days of the due date of such payment. When in default, the delinquent assessment or delinquent installment thereof due to the Association shall bear interest at the lesser of the rate of twelve percent (12%) per annum or the maximum rate permitted by applicable law until such delinquent assessment or installment thereof, and all interest due thereon, has been paid in full to Association. Any assessment levied pursuant to this Declaration, or any installment thereof, which is not paid within ten (10) days after it is due, shall be subject to such reasonable late charge per month for each monthly assessment in arrears as the Board may from time to time fix. All monies owing to the Association shall be due and payable at the principal office of Association in the State of North Carolina, or at such other address as the Association may designate from time to time by notice in writing.

6.5 Prohibition of Exemption from Liability for Contribution Toward Common Expenses. No Lot Owner may exempt himself from liability for his share of the Common Expenses assessed by the Association by waiver of the use or enjoyment of any of the Common Elements or by abandonment of his Lot or otherwise.

6.6 Default by the Association. In the event of default by the Association in the payment to the jurisdiction entitled thereto of any assessments for public improvements or ad valorem taxes levied against the Common Elements, which default shall continue for a period of six (6) months, each Lot Owner of a Lot shall become personally obligated to pay the jurisdiction a portion of the taxes or assessments in an amount determined by dividing the total taxes and/or assessments due to the jurisdiction by the total number of Lots. If the sum is not paid by the Lot Owner within thirty (30) days following receipt of notice of the amount due, the sum shall become a continuing lien on the property of the Lot Owner, his heirs, devisees, personal representatives, and assigns. The taxing or assessing jurisdiction may either bring an action at law against the Lot Owner personally obligated to pay the same, or may elect to foreclose the lien against the property of the Lot Owner. Further, upon default or termination of the Association, all Lot Owners shall be jointly and severally liable for any costs attendant to the maintenance of any Permanent Retention Pond(s) on the Property.

6.7 Maximum Annual Assessment. Until December 31 of the year of the conveyance of the first Lot to an Owner other than the Declarant, the maximum annual assessment shall be (\$1,200.00) per Lot, which may be collected in monthly payments of One Hundred Dollars (\$100.00) per Lot. The annual assessment for any Lot owned by the Declarant on which a Living Unit has been completed but is unoccupied as a residence, shall be for both annual and special assessment twenty-five percent (25%) of the assessments for Lots owned by Lot Owners other than the Declarant. Immediately upon conveyance of a Lot to a Lot Owner other than the Declarant or once any Lot is leased or rented by the Declarant, the assessments shall increase to one hundred percent (100%) of the assessments with the exception of the assessment rate for Lots owned by the Declarant and unoccupied as residences, the rate of assessment shall be uniform for all Lots.

(a) 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 Board of Directors and may be increased by

the Board of Directors without approval by the membership by an amount not to exceed ten percent (10%) of the maximum annual assessment of the previous year. At least thirty (30) days in advance of each annual assessment period, the Board of Directors shall fix the amount of the annual assessment and provide written notice thereof to the Lot Owners. The Board shall also set the due date for the payment of assessments.

(b) 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 two-thirds (2/3) of each class of Members who are voting in person or by proxy, at a meeting duly called for this purpose.

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

6.8 Special Assessments and Capital Improvements. In addition to the annual assessment authorized above, the Board 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 any construction, reconstruction, repair or replacement of a capital improvement upon the Common Elements, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds of the votes of each class of Members who are voting in person or by proxy at a meeting duly called for such purpose. All special assessments shall be fixed at a uniform rate for all Lots and may be collected on a monthly basis.

6.9 Notice and Quorum for any Action Authorized Under Sections 6.6(b) and 6.7. Written notice of any meeting called for the purpose of taking any action authorized under Section 6.6(b) and 6.7 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 sixty percent (60%) of all the votes of each class of membership 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.

6.10 Property of the Association. All monies collected by the Association shall be treated as the separate property of the Association, and such monies may be applied by the Association to the payment of any expense of operating and managing the Property, or to the proper undertaking of all acts and duties imposed upon it by virtue of this Declaration, the Articles of Incorporation and the Bylaws of the Association. As monies for any assessment are paid to the Association by any Lot Owner, the same may be commingled with monies paid to the Association by any other Lot Owners. Although all funds and common surplus, including other assets of the Association, and any increments thereto or profits derived therefrom or from the leasing or use of Common Elements, 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 a Lot Owner shall cease to be a member of the Association by reason of his divestment of ownership of such Lot, by whatever means, the Association shall not be required to account to such Lot Owner for any share of the funds or assets of the Association, or which may have been paid to the Association by such Lot Owner, as all monies which any Lot 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 Property.

6.11 Liability of Multiple Lot Owners. The Lot Owner(s) of each Lot shall be personally liable, jointly and severally, to the Association for the payment of all assessments, regular or special, which may be levied by the Association against such Lot while such party or parties are Lot Owner(s) shall be personally liable, jointly and severally, for interest on such delinquent assessment or installment thereof as above provided, and for all late charges and costs of collecting such assessment or installment thereof and interest thereon, including a reasonable attorneys' fee, whether suit be brought or not.

6.12 Lien for Assessments.

(a) The Association is hereby granted a lien upon each Lot, which lien shall secure and does secure the monies due for all assessments now or hereafter levied against the Lot Owner of each such Lot, which lien shall also secure interest, if any, which may be due on the amount of any delinquent assessments owing to the Association, and which lien shall also secure all late charges, fines and all costs and expenses, including reasonable attorneys' fees, which may be incurred by the Association in enforcing this lien upon said Lot. The lien granted to the Association may be foreclosed in the same manner that real estate deeds of trust may be foreclosed under power of sale under the laws of the State of North Carolina and in any suit for the foreclosure of said lien, the Association shall be entitled to a reasonable rental from the Lot Owner of any Lot from the date on which the payment of any assessment or installment thereof became delinquent, and shall be entitled to the appointment of a receiver for such Lot. The lien granted to the Association shall further secure such advances for taxes, and payments on account of superior mortgages, lien or encumbrances which may be required to be advanced by the Association in order to preserve and protect its lien, and the Association shall further be entitled to interest at the lesser of (i) the rate of twelve percent (12%) per annum or (ii) the maximum amount permitted by applicable law on any such advances made for such purpose. All persons, firms or corporations who shall acquire, by whatever means, any interest in the ownership of any Lot, or who may be given or acquire a mortgage, lien or other encumbrance thereon, are hereby placed on notice of the lien rights granted to the Association, and shall acquire such interest in any Lot expressly subject to such lien rights.

(b) The lien herein granted unto the Association shall be enforceable from and after the time of recording a claim of lien in the Office of the Clerk of Superior Court of Guilford County, North Carolina, in the manner provided by Article 8 of Chapter 44 of the North Carolina General Statutes, which claim shall state the description of the Lot encumbered thereby, the name of the record owner(s), the amount due and the date when due. The claim of lien shall be recordable any time after default and the lien shall continue in effect until all sums secured by said lien as herein provided shall have been fully paid. Such claims of lien shall include only assessments which are due and payable when the claim of lien is recorded, plus interest, fees, charges, late charges, fines, costs, reasonable attorneys' fees, advances to pay taxes and prior encumbrances and interest thereon, all as above provided. Such claims of lien shall be signed and verified by an officer or agent of the Association. Upon full payment of all sums secured by such claim of lien, it shall be satisfied of record.

The lien provided for herein shall be subordinate to: (i) any liens and encumbrances recorded before the docketing of the lien (including any mortgage or deed of trust); and (ii) liens for real estate taxes and other governmental assessments or charges against the Lot. In addition, the lien provided for herein shall be subordinate to the lien of any First Mortgage. Any person, firm or corporation acquiring title to any Lot and its appurtenant Allocated Interest in the Common Elements by virtue of any foreclosure of a First Mortgage, deed in lieu of foreclosure of a First Mortgage or judicial sale relating to a First Mortgage, shall be liable and obligated only for assessments as shall accrue and become due and payable for said Lot subsequent to the date of acquisition of such title, and it shall not be liable for the payment of any assessments which were in default and delinquent at the time it acquired such title. In the event of the acquisition title to a Lot by foreclosure, deed in lieu of foreclosure or judicial sale, any assessment or assessments as to which the party so acquiring title shall not be liable shall be absorbed and paid by all Lot Owners as a part of the Common Expense, including such purchaser, its heirs, successors and assigns, although nothing herein contained shall be construed as releasing the party liable for such delinquent assessment from the payment thereof or the enforcement of collection of such payment by means other than foreclosure.

(c) Institution of a suit at law to attempt to effect collection of the payment of any delinquent assessment shall not be deemed to be an election by the Association which shall prevent it from thereafter seeking, by foreclosure action, enforcement of the collection of any sums remaining owing to it, nor shall proceeding by foreclosure to attempt such collection be deemed to be an election precluding the institution of a suit at law to collect any sum then remaining owing to Association.

(d) In any voluntary conveyance of a Lot, the purchaser thereof shall not be personally liable for any unpaid assessments owed by the seller prior to the time of such voluntary conveyance.

6.13 Statement of Assessment. The Association shall, upon request, 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.

6.14 Working Capital Fund. In order to help insure that the Association will have sufficient monies available to meet operational needs during the initial months of the Property's existence, the Association has established a working capital fund. At the time of the closing of the first sale of each Lot to a purchaser other than Declarant, the purchaser thereof shall pay into such fund an amount equal to two-twelfths (2/12ths) of the current annual assessment established by the Association; provided that if, prior to first sale of a Lot, the Declarant shall have advanced to the Association such Lot's share of the working capital fund, then Declarant may be reimbursed for such advance from amounts otherwise payable into the working capital fund from proceeds collected at the closing of such first sale of the Lot. 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 this Declaration and the Bylaws.

## ARTICLE VII

### Party Structures

#### 7.1 Applicability.

This Section shall apply to each shared roof, wall, fence or driveway built as a part of the original construction of single-family Units, as well as common utility or service connections, common facilities or other common equipment and property serving two or more adjacent Units:

(a) any part of which is built upon or straddling the boundary line between two adjoining Units; or

(b) which is built within four feet of the boundary line between adjoining Units, has no windows or doors, and is intended to serve as a privacy wall for the benefit of the adjoining Unit; or

(c) which otherwise serves and/or separates two adjoining Units, regardless of whether constructed wholly within the boundaries of one Unit;

and shall constitute a party wall, party fence, or party driveway, respectively (each herein referred to as "Party Structure"). The Owners of each such Unit (the "Adjoining Owners") shall own that portion of the Party Structure lying within the boundaries of their respective Units and shall have an easement for use and enjoyment and, if needed, for support, in that portion, if any, of the Party Structure lying within the boundaries of the adjoining Unit.

Anything contained or implied herein to the contrary notwithstanding, the provisions of this Section 7.1 shall not apply to any such shared equipment, facilities, property or service that are subject to other recorded covenants and restrictions, approved by the Declarant, that require maintenance, repair, or replacement by a separate owners' association or other management entity.

#### 7.2 Joint and Equal Obligations of Maintenance, Repair and Replacement.

In the event of required maintenance, repair as a result of damage, or replacement because of destruction of a Party Structure from any causes, other than the negligence of an Adjoining Owner, the Adjoining Owners of the subject Party Structure shall, at joint and equal expense, maintain, repair and rebuild the Party Structure. Required repair or rebuilding of a damaged or destroyed Party Structure shall be the same size and of the same or similar material and of like quality as the Party Structure initially constructed, situate generally in the original location on the common property line between adjoining Units, all pursuant to applicable governmental regulation and permits. Each such Adjoining Owner, their respective heirs, successors, and assigns, shall have the right to the use of the Party Structure so repaired or rebuilt. The Adjoining Owners shall undertake repairs and reconstruction of the Party Structure wherever a condition exists which may result in damage or injury to person or property if repair or reconstruction work is not undertaken. Either Adjoining Owner, upon discovering the possibility of damage or destruction, shall notify the other Adjoining Owner of the nature of the



damage, the work required to remedy the situation, and the estimated cost of the repair or reconstruction. The other Adjoining Owner shall then have twenty (20) days from the receipt of the notice either to object to the repairs or reconstruction or to pay such noticed Adjoining Owner's share of the cost of the work. However, in the event of an emergency (i.e., a condition that is immediately threatening to the safety of persons or property), the Adjoining Owner giving such notice may undertake without consent only such work as shall abate the emergency, and the noticed Adjoining Owner shall then have five (5) days from receipt of the notice, which notice shall state with particularity the nature and extent of the existing emergency and the immediate actions taken or to be taken to abate the emergency and what further work, if any, is required for full repair and restoration, after which the noticed Adjoining Owner shall pay its share of the emergency abatement costs, and within the twenty (20) days above provided, shall either object to the further repair or reconstruction work or pay the noticed Adjoining Owner's share of the cost of such further work. The failure of the Adjoining Owner receiving such notice to object in writing to the Adjoining Owner sending such notice within the period of time provided shall be deemed to constitute such noticed Adjoining Owner's acceptance. In the event the Adjoining Owner receiving such notice objects in writing to such work to be done within the period of time provided, either Adjoining Owner may initiate resolution of such disputed repair or reconstruction pursuant to the terms and conditions of ARTICLE XI, Section 11.1(c).

### 7.3 Damage or Destruction Caused By Negligence.

If either Adjoining Owner's negligence, which is deemed to include the negligence of such Adjoining Owner's family, tenant, guest or invitee, shall cause damage to or destruction of the Party Structure, the negligent Adjoining Owner shall bear the entire cost of repair or reconstruction.

### 7.4 Failure to Pay Share of Expenses.

If an Adjoining Owner shall neglect or refuse to pay such Adjoining Owner's share, or all of the cost in case of negligence, arising from the repair or reconstruction of the Party Structure in accordance with Section 7.2, the other Adjoining Owner may, but shall not be required to, undertake such repair or reconstruction and to pay the share of the cost and expense of the Adjoining Owner neglecting or refusing to so pay, which amount thereof shall constitute a "Shared Cost Assessment" collectable in accordance with Section 7.7 and subject to lien therein provided.

### 7.5 Decision Not to Rebuild.

Any portion of the Party Structure which is damaged or destroyed must be repaired or replaced promptly by the Owners unless:

(a) Repair or replacement would be illegal under any law, statute or ordinance governing health and safety; or

(b) The Adjoining Owners agree unanimously, in writing, not to repair and reconstruct the damaged or destroyed Party Structure, and the DRC consents to such decision in writing.

## 7.6 Adjoining Owners' Easements.

### (a) Access.

Each Adjoining Owner, and their respective guests, invitees, successors and assigns shall have a non-exclusive, perpetual easement of access, ingress and egress on, over and across any Party Structure designed for access, ingress and egress, such as shared driveways and walkways.

### (b) Maintenance, Repair and Construction Easement.

There shall exist for the benefit of each Adjoining Owner, and their respective guests, invitees, successors and assigns a perpetual easement for access, ingress and egress on, over and across such portions of the other Adjoining Owner's Unit reasonably necessary or desirable for the construction, repair, maintenance and replacement of the Party Structure. With respect to the whole or any portion of a Party Structure located upon an Adjoining Owner's Unit, an Adjoining Owner shall have an encroachment easement upon the other Adjoining Owner's Unit pursuant to Section 7.6(c). This construction, repair, maintenance and replacement easement shall include the right to make minor cuts in an Adjoining Owner's Unit to secure flashing or other materials, provided such work does not impair the Unit's structural integrity and water tightness; and shall also include the right to temporarily alter, obstruct and/or block off portions of the Party Structure during construction or repair in order to avoid injury to persons or damage to property. However, in every case of alteration, obstruction or blocking, the said Adjoining Owner exercising such right shall provide, if possible, reasonable alternative means of use and access around the affected area to allow access to and the continued use and enjoyment thereof by persons entitled to such use and enjoyment. All such construction, repair, maintenance and replacement shall be undertaken and completed in accordance with applicable governmental regulations and permits therefor.

### (c) Encroachment Easements and Licenses.

There shall exist for the benefit of each Adjoining Owner an exclusive perpetual encroachment easement and license on and across such portions of the Party Structure reasonably necessary or desirable, to perform any maintenance, repair, reconstruction or replacement of the Party Structure, being generally along the common property line between the Adjoining Owner's Units. There shall also exist for the benefit of each Adjoining Owner an encroachment easement and license to physically attach to the Party Structure any portion of its improvements attached in the original construction or required or desirable for support. Such encroachment easements and licenses shall include the right (but not the duty) to install, use, replace and maintain utility lines and facilities under and beneath such properties, including without limitation pipes and lines for water, electricity, telephone and cable television, all subject to the reasonable right of the respective Adjoining Owners to designate the actual location of any such utility easements encumbering their respective Units.

## 7.7 Shared Cost Assessments for Joint Structures.

### (a) Creation of Lien and Personal Obligation for Shared Cost Assessments.

Each Adjoining Owner hereby covenants to pay its share of the costs and expenses of maintenance, repair and reconstruction of the Party Structure required pursuant to Section 7.2. Any such shared cost or expense remaining unpaid following five (5) days written demand therefor shall constitute a "Shared Cost Assessment". Any Shared Cost Assessment remaining unpaid for a period of thirty (30) days or longer shall constitute a lien on the Adjoining Owner's Unit when a claim of lien is filed of record in the office of the Clerk of Superior Court for Guilford County, North Carolina. A claim of lien shall set forth the name and address of the Adjoining Owner filing the lien, the name of the delinquent record holder of the adjoining Unit at the time the claim of lien is filed, a description of the Unit and the amount of the lien claimed. Such lien may be enforced by judicial foreclosure by the other Adjoining Owner in the same manner in which mortgages on real property may be foreclosed in the State of North Carolina. Proceedings to enforce the lien must be instituted within three (3) years after the docketing of the claim of lien in the office of the Clerk of Superior Court in Guilford County, North Carolina or the lien for unpaid Shared Cost Assessments will be extinguished. In any such foreclosure, the delinquent Adjoining Owner shall be required to pay the costs and expenses of such proceeding (including reasonable attorneys' fees) and such costs and expenses shall be secured by the lien being foreclosed. The delinquent Adjoining Owner shall also be required to pay any Shared Cost Assessments against the Adjoining Owner's Unit, which shall become due during the period of foreclosure, and all such Shared Cost Assessments shall be secured by the lien being foreclosed. The Adjoining Owner holding such lien shall have the right and power to bid in at any foreclosure sale, and to thereafter hold, lease, mortgage, or convey the subject Unit. Each such Shared Cost Assessment, together with such interest, costs and reasonable attorney's fees shall be the personal obligation of the person who was the delinquent Adjoining Owner at the time when the Shared Cost Assessment fell due and also of any subsequent Adjoining Owner of the liened Unit; provided, however, that no Adjoining Owner acquiring title to the liened Unit at a foreclosure sale, or conveyance in lieu of foreclosure, of any mortgage, his successors and assigns, shall have any personal obligation with respect to the portion of any Shared Cost Assessments (together with late charges, interest, fees and costs of collection) related to such Unit, the lien for which is subordinate to the lien of the mortgage being foreclosed, as provided in Section 0.

(b) Assumption of Obligation by Transferee.

The personal obligation of the Adjoining Owner to pay a Shared Cost Assessment shall remain his personal obligation notwithstanding the fact that any successor in title assumes such personal obligation. Furthermore, such prior Adjoining Owner and his successor in title who assumes such liabilities shall be jointly and severally liable with respect thereto, notwithstanding any agreement between such prior Adjoining Owner and his successor in title creating the relationship of principal and surety as between themselves, other than one by virtue of which such prior Adjoining Owner and his successor in title would otherwise be jointly and severally liable to pay such amounts.

(c) Miscellaneous.

An Adjoining Owner may bring legal action against the defaulting Adjoining Owner personally obligated to pay a Shared Cost Assessment or foreclose its lien against the defaulting Adjoining Owner's Unit or pursue both such courses at the same time or

successively. Adjoining Owners are deemed to have, to the fullest extent permitted by law, waived the right to assert any statute providing appraisal rights which may reduce any deficiency judgment obtained against a defaulting Adjoining Owner in the event of such foreclosure, and further waive all benefits that might accrue to an Adjoining Owner by virtue of any present or future homestead exemption or law exempting a Unit or portion thereof from sale.

(d) Subordination of the Charges and Liens.

(i) The lien and permanent charge for the Shared Cost Assessments (together with late charges, interest, fees and cost of collection) authorized herein with respect to a Unit is hereby made subordinate to liens and encumbrances (specifically including, but not limited to, a Mortgage on the Unit) recorded before the docketing of the claim of lien in the office of the Clerk of Superior Court, and (ii) liens for real estate taxes and other governmental assessments and charges against the Unit. Sale or transfer of a Unit shall not affect the lien of the Shared Cost Assessments. However, where the holder of a Mortgage, or other purchaser of a Unit obtains title thereto as a result of foreclosure of a Mortgage, such purchaser and its heirs, successors, and assigns, shall not be liable for the Shared Cost Assessments against such Unit which became due prior to the acquisition of title to such Unit by such purchaser. In the event of co-ownership of the Unit against which the Shared Cost Assessments arises, all of such co-Owners will be jointly and severally liable for the entire amount of such Shared Cost Assessments.

(ii) Such subordination is merely a subordination and shall not relieve the Unit's Adjoining Owner of his personal obligation to pay all Shared Cost Assessments coming due at a time when he is the Adjoining Owner; shall not relieve such Unit from the lien and permanent charge provided for herein (except as to the extent the subordinated lien and permanent charge is extinguished by foreclosure or deed in lieu thereof); and no sale or transfer of such Unit to the Mortgagee or to any other person pursuant to a foreclosure sale, or deed in lieu thereof, shall relieve any previous Adjoining Owner from liability for any Shared Cost Assessment coming due before such sale or transfer.

## **ARTICLE VIII**

### **Exterior Maintenance**

8.1 Exterior Maintenance for Dwelling Units. In addition to maintenance upon the Common Elements, the Association shall provide exterior maintenance upon each dwelling unit on each Lot which is subject to assessments hereunder, as follows: Paint, repair, replace and care of roofs, gutters, downspouts, exterior building surfaces, trees, shrubs, walks and other exterior improvements. Such exterior maintenance shall not include glass surfaces or sub-surface leakage into basement areas or crawl spaces. 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.

8.2 Responsibility of Owners. In the event, as to any Lot, the need for maintenance, repair or replacement for which the Association is responsible hereunder is caused through the willful or negligent act of the Owner, his family, guests or invitees, or is caused by fire,

lightening, windstorm, hail, explosion, riot, riot attending a strike, civil commotion, aircrafts, vehicles and smoke, as the foregoing are defined and explained in North Carolina Standard Fire and Extended Coverage insurance policies, the cost of such maintenance, replacement of repairs shall be added to and become a part of the assessment to which such Lot is subject.

## **ARTICLE IX**

### **Insurance and Casualty**

9.1 **Insurance.** The Association shall maintain insurance, to the extent available, as required by the Planned Community Act, N.C.G.S. § 47F-3-113 and shall maintain liability insurance in accordance with the standards of the City of Greensboro. The Association may engage, or pay as the Common Expense, any appropriate person to act as trustee to receive and disburse insurance proceeds upon such terms as the Board shall determine, consistent with the provisions of the Planned Community Act.

9.2 **Casualty.** In the event of casualty damage, the provisions of the Planned Community Act shall control.

## **ARTICLE X**

### **Architectural Control**

10.1 **Improvements.** No building, fence, wall or other structure or planting or landscaping shall be commenced, erected or maintained upon Lots, nor shall any exterior addition to or change or alteration thereon or therein, including, without limitation, any plantings or landscaping, be made 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 Board of Directors of the Association, or by an architectural committee composed of three (3) or more representatives appointed by the Board. In the event said Board, or its designated committee, fails to approve or disapprove such design and location within sixty (60) days after said plans and specifications have been submitted to it, approval will not be required and this Articles will be deemed to have been dully complied with. Provided that nothing herein contained shall be construed to permit interference with the development of the Properties by the Declarant so long as said development follows the general plan of development of the Properties previously approved by FHA and/or VA or Guilford County.

#### 10.2 **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 Board of Directors of the Association or the Architectural Control Committee which shall evaluate such plans and specifications in light of the purpose of this Article. In the event the Committee fails to approve, modify or disapprove in writing an application within sixty (60) days after plans and specifications have been submitted to it, approval will not be required and this Article will be deemed to have been fully complied with.

(b) As a condition to the granting of approval of any request made under this Article, the Board of Directors of the Association or the Architectural Control Committee may require that the Owner requesting such change be liable for any cost of maintaining or repairing the approved project. If such condition is imposed, the Owner shall evidence his consent thereto by a written document in recordable form satisfactory to the Board of Directors of the Association or the Architectural Control Committee. Thereafter, the Owner, and any subsequent Owner of the Lot, by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree that any cost of maintenance and repair of such improvement shall be a part of the annual assessment or charge set forth in Article VI, and subject to the lien rights described in said Article VI, Sections 6.1 and 6.11.

## ARTICLE XI

### Amendment

11.1 Manners of Amending Declarations. This Declaration may be amended in the following manner:

(a) The covenants and restrictions of this Declaration shall run with 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. During the first twenty-year period, an Amendment to this Declaration may be proposed by the Board of the Association acting upon a vote of a majority of its Board Members, or by Owners of Lots to which at least fifty percent (50%) of the votes in the Association are allocated, whether meeting as members or by instrument in writing signed by them. Upon any amendment to this Declaration being proposed by the Board or Lot Owners, the proposed amendment shall be transmitted to the President of the Association, or other officers of the Association in the absence of the President, who shall thereupon call a special meeting of the members of the Association for a date not sooner than twenty (20) days not later than sixty (60) days from receipt by him of the proposed amendment. It shall be the duty of the Secretary to give to each member written or printed notice of such special meeting, stating the time and place thereof, and reciting the proposed amendment in reasonably detailed form, which notice shall be mailed not less than ten (10) days nor more than fifty (50) days before the date set for such special meeting. If mailed, such notice shall be deemed to be properly given when deposited in the United States Mail addressed to the member at his address as it appears on the records of the Association, first class postage thereon prepaid. Any member may, by written waiver of notice signed by such member, 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 member. At the meeting, the proposed Amendment must be approved by an affirmative vote of the members owning Lots in the Property in order for such Amendment to become effective. An affirmative vote of at least ninety percent (90%) of the Lot Owners shall be required to approve the proposed Amendment. After the initial twenty-year period has expired, an affirmative vote of at least seventy-five percent (75%) of the Lot Owners shall be required to approve the proposed Amendment. Upon adoption, such amendment of this Declaration shall be transcribed and certified by the President and Secretary of the Association as having been duly adopted. The original or an executed copy of such amendment, so certified and executed with the same formalities as a deed, shall be recorded in the Public Records of Guilford County, North Carolina. Such amendment shall specifically refer to the recording data identifying the

Declaration and shall become effective upon recordation. Thereafter, a copy of said amendment in the form in which the same was placed of record by the officers of the Association shall be delivered to the Lot Owners of all Lots, but delivery of a copy thereof shall not be a condition precedent to the effectiveness of such amendment. At any meeting held to consider such amendment, the written vote of any member of the Association shall be recognized if such member 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 such meeting or at such meeting.

11.2 No Amendment of Declarant's Right without Consent. No alteration, amendment or modification of the rights and privileges granted and reserved hereunder in favor of Declarant shall be made without the written consent of Declarant being first had and obtained.

11.3 No Amendment of Obligation to Pay Assessments. No alteration, amendment or modification of these Declarations shall alter the Obligation to pay ad valorem taxes or assessments for public improvements or affect any lien for payment thereof as established herein.

11.4 No Amendment regarding Maintenance of Permanent Retention Pond(s) Without Consent. No alteration, amendment or modification of the Declarations in connection to the maintenance and ownership of the Permanent Retention Pond(s) on the Property shall be made without the written approval by the government office having jurisdiction for watershed protection.

## ARTICLE XII

### Remedies in Event of Default

12.1 Remedies of any Lot Owner or the Association. Each Lot Owner and the Association shall be governed by and shall comply with the provisions of this Declaration, and the Articles of Incorporation and Bylaws of the Association, as any of the same are now constituted or as they may be amended from time to time. A default by the Association or a default by the Lot Owner shall entitle the Association or the Lot Owner, as appropriate, to the following relief:

(a) Failure to comply with any of the terms of this Declaration or other restrictions and regulations contained in the Articles of Incorporation by 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. Such relief may be sought by the Association or, if appropriate, by an aggrieved Lot Owner.

(b) As provided herein and in the Bylaws, each Lot Owner shall be liable for the expense of any maintenance, repair or replacement rendered necessary by his act, neglect or carelessness, or by that of any member of his family, or his or their guests, employees, agents or lessees, but only to the extent that such expense is not met by the proceeds of insurance carried by the Association. Such liability shall include any increase in fire insurance rates occasioned by use, misuse, occupancy or abandonment of a Lot or its appurtenances. Nothing herein contained,

however, shall be construed so as to modify any waiver by insurance companies of rights of subrogation.

(c) The Bylaws of the Association provide that the Association may fine a Lot Owner in an amount not to exceed One Hundred Fifty Dollars (\$150.00) for each violation of this Declaration, the Bylaws or the Rules and Regulations of the Association, or may assess liability in an amount not to exceed Five Hundred Dollars (\$500.00) for damage to Common Elements caused by a Lot Owner, which damage is not covered by the Association's insurance. As set forth in the Bylaws, a hearing for an accused Lot Owner must be held before an adjudicatory panel appointed by the Association, which panel shall accord to the party charged with the violation: (i) notice of the charge; (ii) opportunity to be heard and to present evidence; and (iii) a notice of the decision. Any such fine or liability assessment shall be both the personal obligation of the Lot Owner against whom the fine is assessed and a lien upon the Lot of such owner and its appurtenant Allocated Interest, to the same extent as the assessments described in Article VI hereof.

(d) If damage is inflicted on any Lot by an agent of the Association acting within the scope of his activities as such agent, the Association shall be liable to repair such damage or to reimburse the Lot Owner for the cost of repairing such damages. The Association shall also be liable for any losses to the Owner.

(e) In any proceeding arising because of an alleged default by a Lot 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 Lot 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 Lot Owner to enforce such right, provision, covenant or condition in the future.

(g) All rights, remedies and privileges granted to the Association or the Lot Owner, pursuant to any terms, provisions, covenants or conditions of this 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 documents shall not constitute a waiver of the right of Declarant to thereafter enforce such right, provision, covenant or condition in the future.

(i) The failure of a First Mortgagee, as said term is herein defined, to enforce any right, provision, privilege, covenant or condition which may be granted to it by this Declaration or other above-mentioned documents, shall not constitute a waiver of the right of said party or parties to thereafter enforce such rights, privileges, covenant or condition in the future.



## ARTICLE XIII

### Rights Reserved Unto First Mortgagees

13.1 Rights of a First Mortgagee. "First Mortgagee" or "First Mortgagees," as the terms are used herein, shall mean and refer to banks, savings and loan associations, insurance companies, other firms or entities customarily affording loans secured by liens on residences, the Federal National Mortgage Association, the Federal Home loan Mortgage Corporation and eligible insurers and governmental guarantors. In addition to any other rights set forth in this Declaration, so long as any First Mortgagee shall hold any mortgage upon any Lot, or shall be the owner of any Lot, such First Mortgagee shall have the following rights:

(a) To examine, at reasonable times and upon reasonable notice, the books and records of the Association and the annual financial statement and report of the Association, prepared by an independent accountant designated by the Association, such financial statement and report to be available within one hundred twenty (120) days following the end of the Association's previous fiscal year.

(b) To be given timely written notice by the Association of the call of any meeting of the membership to be held for the purpose of considering (1) any material alteration, amendment or modification of this Declaration, the Articles of Incorporation or the Bylaws. Such notice shall state the nature of the amendment or action being proposed.

(c) To be given timely written 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 such First Mortgagee.

(d) To be given timely written notice of any condemnation or substantial casualty loss to the Common Elements.

(e) To have the right to approval of any alienation, releases, transfer, hypothecation or other encumbrance of the Common Elements, other than those specific rights vested in the Association pursuant to this Declaration.

13.2 Registration by First Mortgagee. Whenever any First Mortgagee desires the provisions of this Article to be applicable to it, it shall serve or cause to be served written notice of such fact upon the Association by Registered Mail or Certified Mail addressed to the Association and sent to Turlington Townhomes Homeowners Association, Inc., 5201 Bodie Lane, Greensboro, NC 27401, or other registered address designated with the North Carolina Secretary of State, identifying the Lot or Lots upon which such First Mortgagee, or identifying any Lots owned by it, together with sufficient pertinent facts to identify any mortgage or mortgages which may be held by it or them, and which notice shall designate the place to which notices are to be given by the Association to such First Mortgagee.

## ARTICLE XIV

### Right of Declarant to Designate Members of Executive Board of the Association

14.1 Right to Designate Members of the Board. Declarant shall be entitled to designate and select a majority of the persons who shall serve as Members of the Board of the Association until the first to occur of: (i) one hundred twenty (120) days after Declarant conveys seventy-five percent (75%) of the Lots in the Property (including Lots which may be created pursuant to the Development Rights reserved in Article IV of this Declaration); (ii) two (2) years after Declarant has ceased to offer Lots for sale in the ordinary course of business; (iii) two (2) years after Declarant's last exercise of its right under Article III of this Declaration to add additional Lots to the Property; or (iv) seven (7) years after the date of the sale of the first Lot in the Property.

14.2 Number of Board Members Appointed by Declarant. Not later than sixty (60) days after conveyance of 25% of the Lots, including Lots which may be created under Article IV to Lot Owners other than the Declarant, at least one member and not less than 25% of the members of the Board shall be elected by Lot Owners other than the Declarant. Not less than 60 days after conveyance of 50% of the Lots including Lots that may be created under Article III to Lot Owners other than the Declarant, not less than 33% of the members of the Board shall be elected by Lot Owners other than the Declarant.

14.3 Means of Designation and Right to Remove. Whenever Declarant shall be entitled to designate and select any person to serve on any Board, the manner in which such person 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 selected by it to act and serve on said Board and to replace such person with another person to act and serve in the place of any Director so removed for the remainder of the unexpired term of any Board Member so removed. Any Board Member designated and selected by Declarant need not be a Lot Owner or a resident of the Property.

## ARTICLE XV

### General Provisions

#### 15.1 Annexation.

(a) Additional residential property and Common Elements may be annexed to the Properties with the consent of two-thirds (2/3) of each class of Members.

(b) Additional land within the area described in the metes and bounds description attached hereto as SCHEDULE A and incorporated herein by reference may be annexed by the Declarant without the consent of Members within seven (7) years of the date of this instrument provided that FHA and VA determine that the annexation is in accord with the general plan heretofore approved by them.

15.2 FHA/VA Approval. As long as there is a Class B membership, the following action will require the prior approval of the FHA or VA: dedication of Common Elements and amendment of this Declaration of Covenants, Conditions and Restrictions.

15.3 Interpretation of Declaration. Whenever appropriate singular may be read as plural, plural may be read as singular, and the masculine gender may be read as the feminine or neuter gender. Compound words beginning with the prefix "here" shall refer to this entire Declaration and not merely to the part in which they appear.

15.4 Captions. The captions herein are only for convenience and reference and do not define, limit or describe the scope of this Declaration, or the intent of any provision.

15.5 Exhibits. Exhibits A and B attached hereto are hereby made a part hereof.

15.6 Invalidity. The invalidity of any provision of this Declaration shall not be deemed to impair or affect in any manner the validity or enforceability or effect of the remainder of this Declaration, and in such event, all of the other provisions of this Declaration shall continue in full force and effect as if such invalid provision had never been included herein.

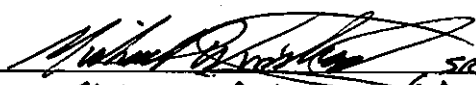
15.7 Waiver. No provision of this Declaration shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches which may occur.

15.8 Law Controlling. This Declaration shall be construed and controlled by and under the laws of the State of North Carolina.

IN WITNESS WHEREOF, the undersigned has executed this Declaration as of the day and year first above written.

(CORPORATE SEAL)

Turlington, LLC,  
a North Carolina limited liability company

By:  SR.  
Name: MICHAEL P. WINSTAD, SR.  
Title: PARTNER/MGR.

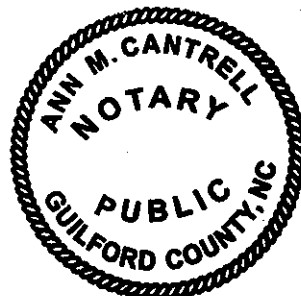
STATE OF NORTH CAROLINA  
COUNTY OF GUILFORD

This 21 day of September, 2007, before me, the undersigned Notary Public in and for the County and State aforesaid, personally came Michael P. Winstead Sr., who, being duly sworn, says that he is manager of Turlington, LLC, a North Carolina limited liability company, and that he signed said instrument on behalf of said limited liability company by its authority duly given.

WITNESS my hand and notarial stamp or seal this 21 day of September, 2007.

Ann M. Cantrell  
Notary Public

My Commission Expires: 7-8-11



**CONSENT AND SUBORDINATION OF MORTGAGEE**

SunTrust Bank, holder of that certain Note secured by that certain deed of trust dated September 1, 2006 and recorded in Book 6593 at Page 2196 in the Guilford County Public Registry does hereby consent to the terms, conditions, and covenants in the foregoing Declaration and the Bylaws described therein, and agree that the lien of said deed of trust, and the interest of the beneficiary therein, are subject and subordinate, in all respects, to the terms, conditions, and covenants contained in said Declaration, including all exhibits, supplemental declarations and other amendments thereto.

IN WITNESS WHEREOF, the undersigned has caused this Consent to be duly executed this 24 day of September, 2007.

SunTrust Bank

By: \_\_\_\_\_

Its: First Vice President

STATE OF NORTH CAROLINA

COUNTY OF Guilford

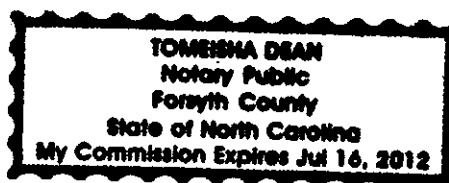
I, Tomeisha Dean, a Notary Public in and for the County and State aforesaid, certify that Jay Easley, personally came before me this day and acknowledged that he/she is FV President of SunTrust Bank and that he/she as FV President being authorized to do so, executed the foregoing on behalf of the corporation.

WITNESS my hand and seal, this 24<sup>th</sup> day of September, 2007

Tomeisha Dean  
Notary Public

My Commission Expires: 7/16/12

[Notary Seal]



**EXHIBIT A**

## To Declaration

BEGINNING at a Bolt in the southern margin of West Friendly Avenue, said point lying South 74°09'03" East a distance of 511.29 feet from NCGS Monument "220E 200", and being a common corner with Melvin and Teresa Hatcher, as recorded in Deed Book 3880, Page 979 in the Office of the Register of Deeds of Guilford County, the POINT OF BEGINNING; thence with the western line of Hatcher South 01°13'57" West a distance of 191.49 feet to a Found Iron Pin, a common corner with Hatcher and Friendly Avenue Apartments, as recorded in Plat Book 79, Page 40 of said Registry; thence with Friendly Avenue Apartments South 01°12'09" West a distance of 50.72 feet to a Point; thence along a new line the following three (3) Bearings and Distances:

- 1) North 87°05'56" West a distance of 38.96 feet to a Point;
- 2) North 78°32'51" West a distance of 76.53 feet to a Point;
- 3) South 88°27'51" West a distance of 66.48 feet to a Point in the Eastern margin of Friendway Drive; thence with said margin North 13°34'16" East a distance of 120.05 feet to a Point; thence continuing with said margin North 15°03'02" East a distance of 134.21 feet to a Concrete Monument at the intersection of Friendway Drive and West Friendly Avenue; thence North 62°01'44" East a distance of 25.78 feet to a Concrete Monument in the southern margin of West Friendly Avenue; thence with the southern margin of West Friendly Avenue South 72°24'35" East a distance of 104.66 feet to the POINT OF BEGINNING, and being 38,303 Square Feet, or 0.879 Acres, more or less.

NPGB01:717956.3-DOC-(JDUNHAM) 035943-00002

**EXHIBIT A-1**

BEGINNING at a Bolt in the southern margin of West Friendly Avenue, said point lying South 74°09'03" East a distance of 511.29 feet from NCGS Monument "220E 200", and being a common corner with Melvin and Teresa Hatcher, as recorded in Deed Book 3880, Page 979 in the Office of the Register of Deeds of Guilford County; thence with the western line of Hatcher South 01°13'57" West a distance of 191.49 feet to a Found Iron Pin, a common corner with Hatcher and Friendly Avenue Apartments, as recorded in Plat Book 79, Page 40 of said Registry; thence with Friendly Avenue Apartments South 01°12'09" West a distance of 50.72 feet to the POINT OF BEGINNING; thence with Friendly Avenue Apartments South 01°12'09" West a distance of 283.30 feet to a Found Iron Pin, a common corner with Sammie and Delzora DuBose, thence with the northern line of DuBose South 78°04'00" West a distance of 204.14 feet to a Found Iron Pin in the Eastern margin of Friendway Drive; thence with said margin North 01°11'18" East a distance of 147.54 feet to a Point; thence continuing with said margin North 02°45'49" East a distance of 53.20 feet to a Point; thence continuing with said margin North 05°07'57" East a distance of 56.25 feet to a Point; thence continuing with said margin North 08°37'13" East a distance of 47.28 feet to a Point; thence continuing with said margin North 11°24'51" East a distance of 38.17 feet to a Point; thence leaving said margin along a new line the following three (3) Bearings and Distances:

- 1) North 88°27'51" East a distance of 66.48 feet to a Point
- 2) South 78°32'51" East a distance of 76.53 feet to a Point;
- 3) South 87°05'56" East a distance of 38.96 feet to the POINT OF BEGINNING, and being 61,474 Square Feet, or 1.411 Acres, more or less.

**EXHIBIT B****BYLAWS OF  
TURLINGTON HOMEOWNERS  
ASSOCIATION, INC.****ARTICLE 1****Name, Offices and Fiscal Year**

Section 1.1 **Name**. The name of this organization is Turlington Homeowners Association, Inc. (hereinafter referred to as the "Association"). The name of the Association may be changed by Amendment to its Articles of Incorporation which is approved in the manner prescribed by applicable law, the Articles of Incorporation and these Bylaws.

Section 1.2 **Principal Office and Registered Office**. The principal office of the Association shall be located at 5201 Bodie Lane, Greensboro, Guilford County, NC 27401, or at such other address as the Board may determine from time to time. The address of the initial registered office of the Association in the State of North Carolina shall be 701 Green Valley Road, Suite 100, Greensboro, Guilford County, NC 27408. The Board may from time to time change the registered office of the Association in the State of North Carolina to another location in such State.

Section 1.3 **Other Offices**. The Association may have other offices at such other places within the State of North Carolina as the Board may from time to time determine or as the affairs of the Association may require.

Section 1.4 **Fiscal Year**. The fiscal year of the Association shall be the calendar year or as otherwise determined by the Board.

**ARTICLE 2****Purpose**

Section 2.1 **Purpose**. The purpose of the Association is to act on behalf of its Members collectively as their governing body with respect to the administration and operation of the "Property" (as this term is hereafter defined), which Property is part of the Townhome project and is subject to the North Carolina Planned Community Act, as amended, and as such to own and acquire any real estate or interest or rights therein or appurtenant thereto and any and all personal property in connection therewith as may be incidental or necessary to such purpose.

Section 2.2 **Definitions**. The words, phrases and terms used in these Bylaws which are not specifically defined herein shall have the meanings as set forth in the Declaration of Covenants, Conditions and Restrictions For Turlington, recorded in the Office of the Register of Deeds for Guilford County, North Carolina (the "Declaration"), if any.



Section 2.3 Applicability of Bylaws. The provisions of these Bylaws are applicable to the Property and the use and occupancy thereof. The term "Property" as used in these Bylaws shall include the Property, all easements, rights, and appurtenances belonging thereto, and all other property, personal or fixed, intended for use in connection therewith. All present and future Lot Owners, mortgagees including First Mortgagees, lessees and Occupants of any portion of the Property and their employees, and any other persons who may use the facilities of the Property in any manner are subject to the Declaration, these Bylaws and the Rules and Regulations and any amendment to these Bylaws or the Declaration upon the same being approved and recorded in the Declaration. The acceptance of a deed or conveyance or the entering into of a lease or the act of occupancy of a Lot or any portion of the Property shall constitute an agreement that these Bylaws and the Rules and Regulations and the provisions of the Declaration or other agreements or restrictions to which such Property may be subject as they may be amended from time to time, are accepted, ratified, and will be complied with.

### ARTICLE 3

#### Membership

Section 3.1 Qualification. Membership in the Association shall be limited to the Lot Owners, and every Lot Owner shall automatically be a Member of the Association. Membership in the Association shall be appurtenant to and may not be separated from Lot ownership. Membership in the Association shall inure automatically to Lot Owners upon acquisition of the fee simple title (whether encumbered or not) to any one or more Lots. The date of recordation in the Office of the Register of Deeds of Guilford County of the conveyance of the Lot in question shall govern the date of ownership of each particular Lot.

Section 3.2 Lot Ownership. Title to portions of the Property may be taken in the name of an individual, or in the names of two or more persons as tenants in common or as joint tenants or as tenants by the entirety, or in the name of a corporation or partnership or association, or in the name of a fiduciary, and the same, collectively if more than the one person or entity, shall be deemed the Lot Owner for the purposes of these Bylaws.

Section 3.3 Place of Meetings. All meetings of the membership shall be held at the Property or at such other suitable place convenient to the Lot Owners as may be designated by Board and stated in the notice of the meeting.

Section 3.4 Annual Meetings. There shall be an annual meeting of the Lot Owners at 7:00 p.m. on the first Monday in April of each year; if not a legal holiday, and if a legal holiday, then at the same time on the next business day following the legal holiday. At such meetings, the Lot Owners shall elect new members to the Board to fill vacancies thereon in accordance with Section 4.4 of these Bylaws, and the Members shall transact such other business as may properly come before them.

Section 3.5 Substitute Annual Meetings. If an Annual Meeting shall not be held on the day designated by these Bylaws, a Substitute Annual Meeting may be called in accordance with the provisions of Section 3.6 and Section 3.7. A meeting so called shall be designated and treated for all purposes as the Annual Meeting.

Section 3.6 Special Meetings. After the first Annual Meeting of the Members, Special Meetings of the Members may be called at any time (i) by the President; (ii) by Lot Owners having at least twenty percent (20%) of the votes in the Association; or (iii) by not less than fifty-one percent (51%) of the Board members. No business shall be transacted at a Special Meeting except as stated in the notice.

Section 3.7 Notice Of Meetings. It shall be the duty of the Secretary to mail a notice of each annual or special meeting of the Lot Owners at least fifteen (15) but not more than sixty (60) days prior to such meeting, stating the time and place where the meeting is to be held and the items on the agenda, including the general nature of any proposed amendment to the Declaration or these Bylaws, any budget changes, and any proposal to remove Board members or officers. The notice shall be hand-delivered or mailed postage prepaid to each Lot Owner of record at such address as such Lot Owner shall have designated by notice in writing to the Secretary. Notice shall be deemed given upon personal delivery or deposit in the United States mail. Notice given to any one tenant in common, tenant by entirety or other joint Lot Owner of a Lot shall be deemed notice to all joint Lot Owners of the subject Lot. Notice shall also be mailed postage prepaid to all First Mortgagees so requesting under the provisions of Article XVII of the Declaration, who may request a representative to attend the meeting of Lot Owners.

Section 3.8 Voting Rights. There shall be one person with respect to each Lot Ownership who shall be entitled to vote at any meeting of the Lot Owners (the "Voting Member"). The Voting Member may be the Lot Owner, or one of a group composed of all of the owners of a Lot or may be some other person designated by such Lot Owners to act as proxy on his or their behalf, and who need not be a Lot Owner. Each Lot Owner or group of owners shall be entitled to one vote for each Lot owned. No votes allocated to a Lot or Lots owned by the Association may be cast.

Section 3.9 Waiver of Notice of Meeting. Any Lot Owner may, at any time, waive notice of any meeting of the Association in writing, and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a Lot Owner at any meeting of the Association shall constitute a waiver by him of the time and place thereof except where a Lot Owner attends a meeting for the express purpose of objecting to the transaction of any business because the meeting was not lawfully called.

Section 3.10 Proxies. Voting Members may vote either in person or by agents duly authorized by written proxy executed by the subject Voting Member or by his duly authorized attorney-in-fact. A proxy is not valid after the earlier of the terms stated therein or the expiration of twelve (12) months from the date of its execution. Unless a proxy otherwise provides, any

proxy holder may appoint in writing a substitute to act in his place. In order to be effective, all proxies must be filed with the Secretary or duly acting Secretary either during or prior to the meeting in question. A Member may not revoke a proxy given pursuant to this Section 3.10 except by written notice of revocation delivered to the person presiding over a meeting of the Association. A proxy is void if it is not dated.

Section 3.11 Quorum. Except as otherwise provided in these Bylaws, the presence in person or by proxy of Lot Owners having at least fifty percent (50%) of the total votes which may be cast for election of the Board shall constitute a quorum at all meetings of the Lot Owners. If any meeting of the Lot Owners cannot be held because a quorum has not attended, a majority in number of those Lot Owners present at such meeting may adjourn the meeting, and at any adjourned meeting the quorum required shall be reduced by 50% of the original quorum required. At any such reconvened meeting at which a quorum is present, any business which might have been transacted at the meeting originally called and adjourned may be transacted without further notice. The Voting Members at a meeting at which a quorum was present may continue to do business until adjournment, notwithstanding the withdrawal of enough Voting Members to leave less than a quorum.

Section 3.12 Majority Vote. The vote of a majority of the Voting Members present at a meeting at which a quorum shall be present shall be binding upon all Lot Owners for all purposes except where by law or in the Declaration or these Bylaws a higher percentage vote is required.

Section 3.13 Actions Without Meeting. Any action which may be taken at a meeting of the membership may be taken without a meeting if consent or ratification, in writing, setting forth the action so taken or to be taken shall be signed by all of the persons who would be entitled to vote upon such action at a meeting and such consent is filed with the Secretary of the Association and inserted in the minute book of the Association.

## ARTICLE 4

### Board

Section 4.1 General Powers. The business, property and affairs of the Association shall be managed by the Board (the "Board") or by such committees as the Board may establish pursuant to these Bylaws. Provided, however, the Board may not act on behalf of the Association to amend the Declaration, to terminate the Association, to elect members of the Board, or to determine the qualifications, powers and duties, or terms of office of Board members. The Board may, however, fill vacancies in its membership for the unexpired portion of any term.

Section 4.2 Number And Qualification. The initial Board shall consist of the four (4) individuals whose names are set forth in the Articles of Incorporation of the Association.

Section 4.3 Powers And Duties. The Board shall have the powers and duties necessary or convenient for the administration of the affairs of the Association and Townhouse and may do all such acts and things except those which by law or by the Declaration or by these Bylaws may not be delegated to the Board. The powers of the Board shall include, but shall not be limited to, the following:

- (a) Operation, care, upkeep and maintenance of the Property other than the Lots.
- (b) Determination of the Common Expenses required for the affairs of the Association.
- (c) Collection of Common Expenses from Lot Owners as herein or in the Declaration provided.
- (d) Employment and dismissal of the personnel necessary for the maintenance and operation of the Property.
- (e) Adoption and amendment of Rules and Regulations covering the details of the operation and use of the Property. Written notice of such Rules and Regulations shall be given to all Lot Owners or Occupants, and the Property shall at all times be maintained subject to such Rules and Regulations.
- (f) Opening of bank accounts on behalf of the Association and designating the signatories required therefore.
- (g) Supervising all officers, agents and employees of the Association and insuring that their duties are properly performed.
- (h) Enforcing, on behalf of the Association, the obligations and assessments provided in the Declaration, including, but not limited to, the institution of civil actions to enforce payment of the assessments as provided in the Declaration, the institution of actions to foreclose liens for such assessments in accordance with the terms of N.C.G.S. § 47C-3-116 or any successor provision, the imposition of charges for late payment of assessments, and after notice and an opportunity to be heard, levying reasonable fines for violations of the Declaration, these Bylaws and the Rules and Regulations, not to exceed One Hundred Fifty and No/100 Dollars (\$150.00) per violation.
- (i) Enforcing by any legal means or proceeding the provisions of the Articles of Incorporation of the Association, these Bylaws, the Declaration or the Rules and Regulations hereinafter promulgated governing use of the Common Elements.

(j) Paying all taxes and assessments which are or may become liens against any part of the Townhomes, other than the Lots, and to assess the same against the Lot Owners in the manner herein provided.

(k) Purchasing or leasing or otherwise acquiring in the name of the Association or its designee, corporate or otherwise, on behalf of all Lot Owners, Lots offered for sale or surrendered by their Lot Owners to the Association.

(l) Purchasing of Lots at foreclosure or other judicial sales in the name of the Association or its designee, corporate or otherwise, on behalf of all Lot Owners.

(m) Selling, leasing, mortgaging, voting the votes appurtenant to (other than for the election of members of the Board), or otherwise dealing with Lots acquired by, and subleasing Lots leased by, the Association, or its designee, corporate or otherwise, on behalf of all Lot Owners.

(n) Organizing corporations to act as designees of the Board in acquiring title to or leasing of Lots on behalf of all Lot Owners.

(o) Obtaining insurance as required or permitted under the terms of the applicable provisions of these Bylaws or the Declaration.

(p) Making of repairs, additions and improvements to or alterations of the Property other than the Lots and repairs to and restoration of the Property other than the Lots in accordance with the other provisions of these Bylaws, after damage or destruction by fire or other casualty or as a result of condemnation or eminent domain proceedings.

(q) Signing all agreements, contracts, deeds and vouchers for payment of expenditures and other instruments in such manner as from time to time shall be determined by written resolution of the Board. In the absence of such determination by the Board, such documents shall be signed by the President, Vice President or Treasurer of the Association, and countersigned by any member of the Board.

(r) Furnishing certificates setting forth the amounts of unpaid assessments that have been levied upon a Lot to the Lot Owner or Mortgagee of such Lot, or a proposed purchaser or Mortgagee of such Lot, and imposing and collecting reasonable charges therefore.

(s) Exercising any other powers and duties reserved to the Association and exercisable by the Board in the Declaration, the Articles of Incorporation, these Bylaws, or the North Carolina Planned Community Act, as amended.

Section 4.4 Election of Board Members. Except as provided herein, the members of the Board (also referred to as the "Directors") shall be elected at the annual meeting of the Association, and those persons who receive the highest number of votes shall be deemed to have been elected. Notwithstanding anything herein to the contrary, the Board shall consist of four

Directors during the period that Declarant is entitled to appoint a majority of the Directors. The Declarant shall have the right to appoint or remove the Directors until the earlier of the following three dates: (a) within 120 days after the date by which 75% of the Lots (including any Lots which may be created pursuant to Special Declarant Rights) have been conveyed to Lot purchasers other than Declarant; (b) two years after all Declarants have ceased to offer Lots for sale in the ordinary course of business, or (c) two years after any development right to add additional Lots under the North Carolina Planned Community Act, as amended, was last exercised.

The Declarant can turn over control of the Association to such Lot Owners other than the Declarant prior to such dates in its sole discretion by causing all or part of its appointed Directors to resign, whereupon it shall be the affirmative obligation of Lot Owners other than the Declarant to elect Directors and assume control of the Association. Provided at least 30 days notice of Declarant's decision to cause its appointees to resign is given to Lot Owners, neither the Declarant, nor such appointees, shall be liable in any manner in connection with such resignations even if the Lot Owners other than the Declarant refuse or fail to assume control.

Within 60 days after conveyance of 25% of the Lots (including Lots which may be created pursuant to Special Declarant Rights) to Lot Owners other than the Declarant, at least one Director and not less than 25% of the directors of the Board shall be elected by Lot Owners other than the Declarant. Within 60 days after conveyance of 50% of the Lots (including Lots which may be created pursuant to Special Declarant Rights) to Lot Owners other than the Declarant, not less than 33% of the Directors of the Board shall be elected by Lot Owners other than the Declarant.

**Section 4.5 Independent Manager.** The Board may employ or enter into a management contract with any individual, firm or entity it deems appropriate and in the best interest of the Association concerning the routine management of the Townhomes. The Board may delegate to such person, firm or entity (the "Manager" or "Independent Manager") such duties and responsibilities in the management of the Property as the Board deems appropriate. Provided, the Board may not delegate to the Independent Manager the complete and total responsibilities and duties of the Association in violation of the North Carolina Nonprofit Corporation Act, as amended or the North Carolina Planned Community Act, as amended. The Board shall have authority to fix the reasonable compensation for the Independent Manager. The Independent Manager shall at all times be answerable to the Board and subject to its direction. Any management agreement for the Townhome Association shall be terminable by either party without cause and without payment of a termination fee or penalty upon 90 days or more written notice thereof and the terms of such agreement may not exceed one year, renewable by agreement of the parties for successive one year terms. Any management agreement shall be terminable by either party for cause upon the giving of not less than 30 days written notice.

**Section 4.6 Term Of Office and Qualification.** The term of office of each member of the Board shall be three years. Each member of the Board shall hold office until his successor shall have been elected and qualified. If the number of members of the Board shall at any time

be increased, the terms of such additional members shall be fixed so that terms of at least one-third (1/3) but not more than one-half (1/2) of the members of the Board shall expire annually. Nothing herein contained shall be construed to prevent the election of a Director to succeed himself. Each Board member, except those selected by the Declarant pursuant to these Bylaws, shall be one of the Lot Owners or co-owners, provided, however, that in the event a Lot Owner is a corporation, partnership, trust or other legal entity other than a natural person or persons, then an officer or director of such corporation, partner of such partnership, beneficiary of such trust or manager of such other legal entity shall be eligible to serve as a member of the Board.

Section 4.7 Removal. At any regular or special meeting of Lot Owners at which a quorum is present, any one or more of the members of the Board not appointed by the Declarant may be removed with or without cause by a vote of at least 67% of all Voting Members present and entitled to vote; members of the Board appointed by the Declarant may be removed only with the prior written consent of the Declarant. Provided, the notice of the meeting must state that the question of such removal will be acted upon at the subject meeting. If any members of the Board are so removed, their successors as Board members may be elected by the membership at the same meeting to fill unexpired terms of the Board members so removed. Any member of the Board whose removal has been proposed by the Lot Owners shall be given an opportunity to be heard at the meeting.

Section 4.8 Resignation. Any Board member may resign at any time, by sending a written notice of such resignation to the Association delivered to the Secretary thereof. Unless otherwise specified therein, such resignation shall take effect upon receipt thereof by the Secretary.

Section 4.9 Vacancies. Vacancies on the Board caused by any reason other than the removal of a member thereof by a vote of the Lot Owners shall be filled by a vote of a majority of the remaining members of the Board at a special meeting of the Board held for that purpose promptly after the occurrence of any such vacancy, provided that there is a quorum of the then remaining members present at such meeting. Each person so elected shall be a member of the Board for the remainder of the term of his predecessor and until a successor shall be elected at the next annual meeting of the Lot Owners. In the event that Declarant, in accordance with these Bylaws, selects any person to serve on the Board, Declarant shall have the absolute right at any time, in its sole discretion, to replace such person with another person to serve on the Board. Replacement of any person designated by the Declarant to serve on the Board shall be made by written instrument delivered to any officer of the Association.

Section 4.10 Chairperson. A member of the Board shall be elected as Chairperson of the Board by the Board members at the first meeting of the Board. The Chairperson shall preside at all meetings of the Board and perform such other duties as may be directed by the Board. Prior to the election of a Chairperson and/or in the event that the Chairperson is not present at any meeting of the Board, the President shall preside.

Section 4.11 Compensation. No member of the Board shall receive any stated salary or fixed fee for their services but, by resolution of the Board, shall be reimbursed for their reasonable expenses incurred in attendance at regular and special meetings of the Board. Members of the Board shall be reimbursed for all expenditures made by them on behalf of the Association or the Board. All such reimbursements shall be deemed part of the Common Expenses and as such shall be subject to the review of the Lot Owners.

Section 4.12 Loans to Board Members and Officers. No loans shall be made by the Association to its Board members or officers. The Board members who vote for or assent to the making of a loan to a Board member or officer of the Association, and any officer or officers participating in the making of such loan, shall be jointly and severally liable to the Association for the amount of such loan until the repayment thereof.

Section 4.13 Meetings of the Board.

(a) Regular Meetings. The first meeting of the initial Board designated by the Declarant shall be held at such time as Declarant shall determine, but in no event later than one year from the date of incorporation of the Association. Thereafter, regular meetings shall be held, without notice, at such hour and address as may be fixed from time to time by resolution of the Board. Should any such meeting fall upon a legal holiday, then that meeting shall be held at the same time on the next day which is not a legal holiday.

(b) Special Meetings. Special meetings shall be held when called by the President of the Association, or by any two Board members, after not less than three (3) or more than thirty (30) days written notice to each member of the Board.

(c) Notices of Special Meetings. The notice provided for herein may be waived by written instrument signed by those Board members who do not receive said notice. Except to the extent otherwise required by law, the purpose of a Board members' special meeting need not be stated in the notice. Notices shall be deemed received upon the happening of any one of the following events: (i) one day following deposit of the same in the United States mail with proper postage paid and addressed to the Board member at his last known address on file with the Association; (ii) deposit of same in his Lot mail box; or (iii) delivery to the Board member. Attendance by a Board member at a meeting shall constitute a waiver of notice of such meeting unless the subject Board member gives a written statement at the meeting to the person presiding objecting to the transaction of any business because the meeting is not lawfully called and gives such notice prior to the vote on any resolution.

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

(e) Quorum. A majority of the Board members then holding office shall constitute a quorum for the transaction of business and every act or decision done or made by a majority of



the Board members present at a duly held meeting at which quorum is present shall be regarded as the act or decision of the Board.

(f) Minutes. The Board shall keep minutes of its proceedings, which shall be available for inspection by the Lot Owners during reasonable business hours.

Section 4.14 Action Without Meeting. The members of the Board shall have the right to take any action in the absence of a meeting which they could take at a meeting by obtaining the written approval of all of the members of the Board. Any such action or authorization shall have the same force and effect as if taken or authorized at a meeting of the Board. Said written approval shall be filed with the minutes of the proceedings of the Board, whether done before or after the action so taken.

Section 4.15 Presumption of Assent. A Board member who is present at a meeting of the Board at which action on any corporate matter is taken shall be presumed to have assented to the action taken unless his contrary vote is recorded or his dissent is otherwise entered in the minutes of the meeting or unless he shall file his written dissent to such action with the person acting as the Secretary of the meeting before the adjournment thereof or shall forward such dissent by registered mail to the Secretary of the Association immediately after the adjournment of the meeting. Such right to dissent shall not apply to a member of the Board who voted in favor of such action.

Section 4.16 Fidelity Bonds. The Board shall obtain adequate fidelity bonds for all officers and employees of the Association handling or responsible for Association funds. The premiums on such bonds shall constitute a common expense.

## ARTICLE 5

### Committees

Section 5.1 Creation. The Board, by resolutions adopted by a majority of the number of Board members then holding office, may create such committees as they deem necessary and appropriate in aiding the Board to carry out its duties and responsibilities with respect to the management of the Townhome Association. Each committee so created shall have such authority and responsibilities as the Board members deem appropriate and as set forth in the resolutions creating such committee. The Board shall elect the members of each such committee. Provided, each committee shall have in its membership at least one (1) officer or one (1) member of the Board.

Section 5.2 Vacancy. Any vacancy occurring on a committee shall be filled by a majority of the number of Board members then holding office at a regular or special meeting of the Board.

Section 5.3 Removal. Any member of a committee may be removed at any time with or without cause by a majority of the number of Board members then holding office.

Section 5.4 Minutes. Each committee shall keep regular minutes of its proceedings and report the same to the Board when required.

Section 5.5 Responsibility of Board Members. The designation of committees and the delegation thereto of authority shall not operate to relieve the Board or any member thereof of any responsibility or liability imposed upon it or him by law.

If action taken by a committee is not thereafter formally considered by the Board, a member of the Board may dissent from such action by filing his written objection with the Secretary with reasonable promptness after learning of such action.

## ARTICLE 6

### Officers

Section 6.1 Designation. The officers of the Association shall be a President, a Vice-President, a Secretary, a Treasurer and such assistants to such officers and such other officers as the Board may deem necessary from time to time, all of whom shall hold office at the pleasure of the Board. The President, Vice President, Secretary and Treasurer shall be elected from among the Board, and all other officers, if any, need only be a Lot Owner. The officers elected by the initial Board are not required to be Lot Owners.

Section 6.2 Election and Term. The officers of the Association shall be elected annually by the Board at its Annual Meeting. Each officer shall hold office for a period of one year, or until his death, resignation, removal or until his successor is elected and qualified.

Section 6.3 Removal. Upon the affirmative vote of a majority of the members of the Board then holding office, any officer may be removed, either with or without cause, and his successor elected at any annual meeting of the Board or at any special meeting of the Board called for such purpose.

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

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

Section 6.6 President. The President shall be the chief executive officer of the Association and shall preside at all meetings of the Lot Owners. In the absence of an elected Chairperson, he shall preside at all meetings of the Board. He shall have all of the general powers and duties which are incident to the office of president of a corporation organized under Chapter 55A of the North Carolina General Statutes in the supervision and control of the management of the Association in accordance with these Bylaws.

Section 6.7 Vice President. The Vice President shall take the place of the President and perform his duties whenever the President shall be absent or unable to act. If neither the President nor Vice President is able to act, the Board shall appoint some other member of the Board to act in place of the President on an interim basis. The Vice President shall also perform such other duties as shall from time to time be imposed upon him by the Board or which shall be delegated to him by the President.

Section 6.8 Secretary. The Secretary shall keep the minutes of all meetings of the Lot Owners; keep records of Lot Ownership, each Lot Owner's vote total and the total authorized vote; he shall have charge of such books and papers as the Board may direct; and he shall, in general, perform all the duties incident to the office of secretary of a corporation organized under Chapter 55A of the North Carolina General Statutes.

Section 6.9 Treasurer. The Treasurer shall have the responsibility for Association funds and securities and shall be responsible for keeping full and accurate financial books of account showing all receipts and disbursements, and for the preparation of all required financial statements. He shall be responsible for the deposit of all monies and other valuable effects in the name of the Board, or the Independent Manager, in such depositories as may from time to time be designated by the Board, and he shall, in general, perform all the duties incident to the office of treasurer of a corporation organized under Chapter 55A of the North Carolina General Statutes.

Section 6.10 Agreements, Contracts, Deeds, Checks, Etc. All agreements, contracts, deeds, leases, checks and other instruments of the Association shall be executed by any two officers of the Association or by such other person or persons as may be designated by the Board.

Section 6.11 Compensation. Officers shall not be compensated on a regular basis for the usual and ordinary services rendered to the Association incident to the offices held by such officers. The Board may, however, with a unanimous vote, compensate any officer or officers who render unusual and extraordinary services to the Association beyond that called for to be rendered by such person or persons on a regular basis. Officers shall be reimbursed for all expenditures made by them on behalf of the Association. All such reimbursements shall be

deemed part of the common expenses and as such shall be subject to the review of the Lot Owners.

Section 6.12 Indemnification. To the extent permitted by the provisions of the North Carolina Nonprofit Corporation Act, as amended in effect at the applicable times, each officer is hereby indemnified by the Association with respect to any liability and expense of litigation arising out of his activities as an officer. Such indemnity shall be subject to approval by the Members only when such approval is required by said Act, as amended.

## ARTICLE 7

### Operation of the Property

Section 7.1 Determination of Common Expenses and Fixing of Common Charges. The Board shall, from time to time, and at least annually, prepare or cause to be prepared a budget for the Association based on an estimation of expenses, income and establishment of necessary reserves for the following year. The Common Expenses shall include, among other things: (a) the cost of all insurance premiums on all policies of insurance to be or which have been obtained by the Board pursuant to the provisions hereof; (b) any payments to be made to members of the Board and Officers in accordance with the provisions hereof; and (c) such amounts as the Board may deem proper for the operation and maintenance of the Property, including without limitation, amounts for working capital of the Association, a general operating reserve, a reserve fund for replacements, a Capital Improvement Fund, and to make up for any deficit in income against expenses for any prior year. The Common Expenses may also include such amounts as may be required for the purchase or lease by the Association or its designee, corporate or otherwise, on behalf of all Lot Owners, of any Lot in accordance with the provisions of these Bylaws, including any Lot which is to be sold at a foreclosure or other judicial sale.

Within 30 days after adoption of a proposed budget by the Board, the Board shall furnish a summary of such budget to each Lot Owner and to his Mortgagee and shall give notice of a date for a meeting of the Lot Owners to consider ratification of the budget not less than 14 nor more than 30 days after mailing of the summary and notice. Notwithstanding anything herein to the contrary, a quorum is not required at the meeting to ratify the budget. The budget is ratified unless at the meeting a majority of all of the Lot Owners, whether or not present at the meeting, votes to reject the budget. In the event the proposed budget is rejected, the periodic budget last ratified shall be continued until such time as the Lot Owners ratify a subsequent budget proposed by the Board. Until a new annual budget is sent to each Lot Owner by the Board, each Lot Owner shall continue to pay that amount which had been established on the basis of the previous budget. If at any time the Board shall deem the amount of the total Lot Owners' common charges to be inadequate by reason of its revision in its estimate of either expenses or income, the Board shall prepare and cause to be delivered to the Lot Owners a revised annual budget for the balance of the year and thereafter common charges shall be determined and paid on the basis of such revision.

**Section 7.2 Payment Of Common Expenses.** All Lot Owners shall be obligated to pay (a) Annual Assessments of Common Expenses assessed by the Board pursuant to the provisions of Section 7.1; (b) special assessments to be established and collected as provided herein, and (c) specific assessments against any Lot which are established pursuant to the terms of these Bylaws. Annual Assessments shall be due and payable in monthly installments on the first day of every month. A late payment charge in an amount to be determined by the Board shall be assessed for any installment not paid by the tenth of the month. Any installment not paid during the month in which it is due shall be subject to the late payment charge and shall accrue interest as provided in Section 7.6, and shall constitute a lien on the Lot as provided in Section 7.7.

No Lot Owner shall be liable for the payment of any part of the Common Expenses assessed against his Lot subsequent to a sale, transfer or other conveyance by him (made in accordance with the provisions of the Declaration and applicable restrictions of record) of such Lot, together with his interest in the Common Elements (and Limited Common Elements, if any). A purchaser of a Lot shall be jointly and severally liable with the seller for the payment of Assessments assessed against such Lot prior to the acquisition by the purchaser of such Lot only if the purchaser expressly assumes such obligation in writing; provided, however, the lien assessed against such Lot shall remain in full force and effect. Any such purchaser shall be entitled to a statement from the Board setting forth the amount of the unpaid Assessments against the seller, and the Lot conveyed shall not be subject to a lien for any unpaid assessments in excess of the amount shown on the statement. Provided, however, that an Institutional Lender or other purchaser of a Lot at a foreclosure sale of such Lot or an Institutional Lender who takes a deed in lieu of foreclosure shall not be liable for, and such Lot shall not be subject to, a lien for the payment of Common Expenses assessed prior to the foreclosure sale or deed in lieu of foreclosure. Such unpaid Common Expenses shall be deemed to be Common Expenses collectible from all of the Lot Owners, including such purchaser, his successors and assigns.

**Section 7.3 Special Assessments.** The Association may levy Special Assessments for Common Expenses not covered by the Annual Assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Elements, including fixtures and personal property related thereto, provided that any such Assessment shall have the assent of not less than two-thirds of the Voting Members at a meeting duly called for this purpose. Such Special Assessments shall be charged to the Lots according to their Allocated Interests in the Common Elements. In addition, the Board may levy Special Assessments against one or more, but less than all, of the Lots to cover repairs or maintenance for which such Lot Owner or Lot Owners are responsible and which they have failed to make, or for repairs or maintenance required of a Lot Owner or Lot Owners which impair the value of the Common Elements or the Lot or Lots, or expenses which are incurred in the abatement of or as a result of a violation by a Lot Owner or Owners of the provisions of the Declaration, the Bylaws or the Rules and Regulations, or for fines levied for said violations, or where the Board of purchased a Lot on behalf of one or more Lot Owners. The period of assessment and manner of payment of such assessment shall be determined by the Board.

Section 7.4 Collection Of Common Charges. The Board shall assess common charges against the Lot Owners from time to time, but at least annually, and shall take prompt action to collect charges due from any Lot Owner which remain unpaid for more than thirty (30) days from the date due for payment thereof.

The Board shall notify First Mortgagees pursuant to the provisions of the Declaration of any amount assessed pursuant to these Bylaws that remains unpaid for more than 60 days from its due date and in any other case where the Lot Owner is in default with respect to the performance of any obligation hereunder for a period in excess of 60 days.

Section 7.5 Collection of Assessments. The Board shall determine Common Expenses against the Lot Owners from time to time, but at least annually, and may, as the Board shall determine, take prompt action to collect any assessments due from any Lot Owner which remain unpaid for more than 30 days from their due date.

The Board shall notify First Mortgagees pursuant to the provisions of the Declaration of any amount assessed pursuant to these Bylaws which remains unpaid for more than 60 days from its due date, and in any other case where the Lot Owner of such Lot is in default with respect to the performance of any obligation hereunder for a period in excess of 60 days.

Section 7.6 Default in Payment of Assessment. In the event of default by any Lot Owner in paying to the Board any amounts assessed by the Board, such Lot Owner shall be obligated to pay a late payment charge as established by the Board from time to time, and interest at the rate of 18% on such amounts from their due date; together with all expenses, including attorneys' fees (as permitted by law), incurred by the Board in collecting such unpaid sums. If a Lot Owner shall be in default in payment of an installment of an Assessment, including but not limited to, the monthly installment based on the annual budget, the Board may accelerate the remaining installments upon ten days' written notice to such Lot Owner, whereupon the entire unpaid balance of such Assessment shall become due upon the date stated in such notice.

The Board may appoint an Adjudicatory Panel composed of five (5) Lot Owners, which may include members of the Board. The Adjudicatory Panel shall have the authority to levy fines not to exceed One Hundred and Fifty Dollars (\$150.00) per violation for a violation of the Declaration, these Bylaws, or any Rules and Regulations enacted by the Board. Prior to the imposition of any such fine, the Adjudicatory Panel shall send to the defaulting Lot Owner written notice of the proposed fine and notice of the date, time and location for a hearing before the Adjudicatory Panel at which time the defaulting Lot Owner and the panel may present evidence. The notice of hearing shall be delivered personally or sent by certified mail before the hearing date. The Adjudicatory Panel shall provide the defaulting Lot Owner written notice of its decision once it is reached. The fine shall be an assessment secured by a lien under Section 47C-3-116 of the North Carolina Planned Community Act, as amended.

Section 7.7 Lien and Personal Obligation. Each Assessment provided for in this Article, together with late payment charges, interest and expenses, including attorneys' fees (as

permitted by law), shall be a charge on and a continuing lien upon the Lot against which the Assessment is made when a notice of such lien has been filed of record in the office of the Clerk of Superior Court of Forsyth County, North Carolina, in the manner provided by Article 8, Chapter 44, of the North Carolina General Statutes, provided such notice of lien shall not be recorded until such sums assessed remain unpaid for a period of 30 days after the same shall become due. Said notice of lien shall also secure all Assessments against the Lot becoming due thereafter until the lien has been satisfied. Said lien may be foreclosed in the same manner as a deed of trust on real property. In addition, each Lot Owner shall be personally liable for any Assessment against his Lot becoming due and payable while he is the Owner of such Lot.

Section 7.8 Priority of Assessment Lien. The lien of the Assessments provided for in this Article shall be prior and superior to all other liens except (a) ad valorem taxes and (b) all sums unpaid on deeds of trust, mortgages or other encumbrances against the Lot prior to the docketing of the Assessment lien. The sale or transfer of any Lot shall not affect the Assessment lien against such Lot. Provided, however, the sale of a Lot pursuant to the foreclosure sale or execution sale instituted by a superior lien holder or conveyance to Mortgagees by deed in lieu of foreclosure shall extinguish the inferior Assessment lien against the subject Lot but no such sale or transfer shall relieve each Lot from liability for any Assessments thereafter becoming due or for any future lien in connection therewith. The Association shall share in the excess, if any, realized by the sale of any Lot pursuant to a foreclosure or action instituted by a superior lien holder, to the extent of its lien.

Section 7.9 Owners Non-Use. No Lot Owner may exempt himself from liability for Assessments and his other obligations to the Association by waiver of the use or enjoyment of any portion of the Common Elements or by the abandonment or sale of his Lot.

Section 7.10 Foreclosure of Liens for Unpaid Assessments. The Board, acting on behalf of the Association, or on behalf of any one or more individual Lot Owners, if so instructed, shall have the power to purchase such Lot at the foreclosure sale and to acquire, hold, lease, mortgage, vote the votes appurtenant to, convey or otherwise deal with the same, subject, however, to applicable restrictions of record. A suit to recover a money judgment for unpaid Assessments shall be maintainable without foreclosure or waiver of the Assessment lien. Where an institutional lender or the purchaser of a Lot obtains title to the Lot as a result of foreclosure of a mortgage, such purchaser, its successors and assigns, shall not be liable for the share of the Common Expenses or Assessments by the Board chargeable to such Lot which became due prior to the acquisition of title to such Lot by such purchaser. Such unpaid share of Common Expenses or Assessments shall be deemed to be a Common Expense collectible from all Lot Owners, including such purchaser, its successors and assigns.

Section 7.11 Abatement and Enjoinment of Violations by Lot Owners. The violation of any Rule or Regulation adopted by the Board, the breach of any Bylaw contained herein, or the breach of any provision of the Declaration, shall give the Board the right, in addition to any other rights set forth in these Bylaws: (a) to enter the Lot in which, or as to which, such violation or breach exists, and to make any repairs, and to summarily abate and remove, at the expense of the defaulting Lot Owner, any structure, thing, or condition which may exist therein contrary to

the intent and meaning of the provisions hereof, and the Board shall not thereby be deemed guilty in any manner of trespass, but no items of construction shall be altered or demolished pursuant to this authority before judicial proceedings are instituted; (b) to enjoin, abate, or remedy by appropriate legal proceedings, either at law or in equity, at the expense of the defaulting Lot Owner, the continuance of any such breach; (c) in any case of flagrant or repeated violation by a Lot Owner, to require such Lot Owner to give sufficient sureties for his future compliance with such Townhome documents; or (d) after notice and an opportunity to be heard, to levy reasonable assessments and fines in accordance with Sections 47C-3-107 and 47C-3-107.1 of the North Carolina Planned Community Act, as amended, for such violations. The failure of the Board or Adjudicatory Panel to so act with respect to any such violation or breach shall not be deemed a waiver of the Board's or Adjudicatory Panel's right to act with respect to the same or any other breach.

Section 7.12 Foreclosure Of Liens For Unpaid Common Charges. In any action brought by the Board to foreclose a lien on a Lot because of unpaid common charges, the Lot Owner shall be required to pay a reasonable rental for the use of his Lot and the plaintiff in such foreclosure action shall be entitled to the appointment of a receiver to collect the same. The Board, acting on behalf of all Lot Owners, shall have power to purchase such Lot at the foreclosure sale and to acquire, hold, lease, mortgage, vote the votes appurtenant to, convey or otherwise deal with the same. A suit to recover a money judgment for unpaid common charges shall be maintainable without foreclosing or waiving the lien securing the same.

Section 7.13 Statement Of Common Charges. The Board shall promptly provide any Lot Owner so requesting the same in writing with a written statement of all unpaid common charges due from such Lot Owner.

Section 7.14 Maintenance And Repair.

(a) All maintenance of and repairs to any Lot or the appurtenances thereto, structural or non-structural, ordinary or extraordinary (other than maintenance of and repairs to any Common Elements and facilities contained therein or appurtenant thereto and not necessitated by the negligence, misuse or neglect of the owner of such Lot) shall be made by the Lot Owner of such Lot. Each Lot Owner shall be responsible for all damages to any and all Lots and/or to the Common Elements and facilities caused by him or that his failure to maintain and repair his Lot may engender. Should any Lot Owner fail to so maintain and repair his Lot and such failure results in a condition hazardous to the health and safety of the occupants of the Property or the structural integrity thereof, or in case of emergency, the Board may make any and all necessary repairs and any costs or expenses thereby incurred shall be charged to such Lot Owner and shall be deemed a common charge against his Lot subject to the lien provided in this Article 7.

(b) All maintenance, repairs and replacements to the Common Elements and facilities, and to the Limited Common Elements and facilities, whether located inside or outside of the Lots, shall be made by the Board and shall be charged to all Lot Owners as a Common Expense, unless such maintenance, repair, or replacement is necessitated by the negligence,



misuse or neglect of a Lot Owner, in which case such expense shall be charged to such Lot Owner and shall be deemed a common charge against his Lot subject to the lien provided in this Article 7.

Section 7.15 Restriction On Use Of Lots. In order to provide for congenial occupancy of the Property and for the protection of the value of the Lots, the use of the Property shall be restricted to and shall be in accordance with the following provisions:

(a) The Lots shall be used for residences only by the owner or owners thereof, their families, guests and invitees and for such other uses as set forth in the Declaration.

(b) The Common Elements and facilities, shall be used only for the furnishing of the services and facilities for which they are reasonably intended and which are customarily incident to the use and occupancy of the Lots.

(c) No nuisances shall be allowed on the Property, nor shall any use or practice be allowed which is a source of annoyance to its residents or which interferes with the peaceful possession or proper use of the Property by its residents.

(d) No improper, offensive or unlawful use shall be made of the Property or any part thereof, and all valid laws, zoning laws and regulations of all governmental bodies having jurisdiction thereof shall be observed. Violations of laws, orders, rules, regulations or requirements of any governmental agency having jurisdiction thereof relating to any portion of the Property shall be corrected by and at the sole expense of the Lot Owners or the Board, whichever shall have the obligation to maintain or repair such portion of the Property.

Section 7.16 Additions, Alterations Or Improvements By Board. Whenever in the judgment of the Board the Common Elements and facilities shall require additions, alterations or improvements costing in excess of \$50,000.00 and there are not adequate reserves established to pay for such work without assessing additional common charges against the Lot Owners, the Board shall proceed with such additions, alterations and improvements and shall assess all Lot Owners for the costs thereof as a Common Expense, subject to the provisions of Sections 7.3 above. Any additions, alterations or improvements costing \$50,000.00 or less, or where there are adequate reserves established to pay for such work, may be made by the Board without approval of Lot Owners or any mortgagees of Lots and the cost thereof shall constitute part of the Common Expenses or shall be charged against appropriate reserve accounts, if any, as the Board may determine.

Section 7.17 Additions, Alterations Or Improvements By Lot Owners. No Lot Owner shall make any structural addition, alteration or improvement in or to his Lot or do any exterior painting or make any exterior alteration or addition (including awnings, grills, etc.) without the prior written consent thereto by the Board. The Board shall have the obligation to answer any written request by a Lot Owner for approval of a proposed structural addition, alteration or

improvement in such Owner's Lot, within thirty (30) days after such request, and failure to do so within the stipulated time shall constitute a consent by the Board to the proposed addition, alteration or improvement. Any application to any governmental authority for a permit to make an addition, alteration or improvement in or to any Lot shall be executed by the Board only, without, however, incurring any liability on the part of the Board or any of them to any contractor, subcontractor or materialman on account of such addition, alteration or improvement, or to any person having any claim for injury to person or damage to property arising therefrom.

Section 7.18 Use Of Common Elements And Facilities. A Lot Owner shall not place or cause to be placed in the stairways or other Common Elements or facilities, including the Limited Common Elements and facilities, other than the areas designated as storage areas, any furniture, packages, or objects of any kind. The entry passages, stairways, entry bridges, etc. shall be used for no purpose other than for normal transit through them.

Section 7.19 Right Of Access. Each Lot Owner hereby grants a right of access to his Lot to the Manager and/or any other person authorized by the Board for the purpose of making inspections or for the purpose of correcting any condition originating in his Lot and threatening another Lot or a Common Area or facility, or for the purpose of performing installations, alterations or repairs to the mechanical or electrical services or other Common Elements or facilities in his Lot or elsewhere, provided that requests for entry are made in advance and that any such entry is at a time reasonably convenient to the Lot Owner. In case of an emergency, such right of entry shall be immediate, whether the Lot Owner is present at the time or not.

Section 7.20 Rules And Regulations. Rules and Regulations concerning the use of the Lots and the Common Elements and facilities may be promulgated, amended and supplemented from time to time by the vote of not less than two-thirds (2/3) of the members of the Board. Copies of such Rules and Regulations shall be furnished by the Board to each Lot Owner prior to the time when the same shall become effective.

Section 7.21 Conveyance or Encumbrances of Common Elements. All or a portion of the Common Elements may be conveyed or subjected to a security interest by the Association in accordance with the provisions of Section 47C-3-112 of the North Carolina Planned Community Act, as amended.

Section 7.22 Nonwaiver of Remedies.

(a) The failure of the Association or any Lot Owner to enforce any right, provision, covenant or condition which may be granted by the Townhome Documents shall not constitute a waiver of the right of the Association or the Lot Owner to enforce such right, provision, covenant or condition in the future.

(b) The failure of Declarant to enforce any right, privilege, covenant or condition which may be granted to it by the Townhome Documents shall not constitute a waiver of the right of Declarant to thereafter enforce such right, provision, covenant or condition in the future.

(c) The failure of a mortgagee to enforce any right, provision, privilege, covenant or condition which may be granted to it or them by the Townhome Documents shall not constitute a waiver of the right of said party or parties to thereafter enforce such right, privilege, covenant or condition in the future.

## ARTICLE 8

### Mortgages

Section 8.1 Notice To Board. A Lot Owner who mortgages his Lot shall notify the Board of the name and address of his mortgagee and shall file a conformed copy of the note and mortgage with the Board. The Board shall maintain such information in a book entitled "Mortgages of Lots."

Section 8.2 Notice Of Unpaid Common Charges. The Board, whenever so requested in writing by a mortgagee of a Lot, shall promptly report any then unpaid common charges due from or any other default by the Owner of the mortgaged Lot.

Section 8.3 Notice Of Default. The Board, when giving notice to a Lot Owner of a default in paying common charges or other default, shall send a copy of such notice to each holder of a mortgage covering such Lot whose name and address has theretofore been furnished to the Board.

## ARTICLE 9

### Sales and Transfers of Interest of Lots

Section 9.1 Severance Of Ownership. No Lot Owner shall execute any deed, mortgage or other instrument conveying or mortgaging title to his Lot without including therein the Allocated Interests, it being the intention hereof to prevent any severance of such combined ownership. For the purpose of these Bylaws, the "Allocated Interests" shall mean, collectively (i) the Lot Owner's undivided interest, if any, in the Common Elements and facilities appurtenant to and necessary for the operation of the Lot as determined in accordance with the North Carolina Planned Community Act, as amended; (ii) the interest of such Lot Owner in any Lots theretofore acquired by the Board or its designee on behalf of all Lot Owners, or the proceeds of the sale or lease thereof, if any; and (iii) the interest of such Lot Owner in any other assets of the Association. Any such deed, mortgage or other instrument purporting to affect one or more of such interests, without including all such interests, shall be deemed and taken to include the interest or interests so omitted, even though the latter shall not be expressly mentioned or described therein. No part of the Allocated Interests of any Lot may be sold,

transferred or otherwise disposed of, except as part of a sale, transfer or other disposition of the Lot to which such interests are appurtenant, or as part of a sale, transfer or other disposition of such part of the Allocated Interests of all Lots.

Section 9.2 Sale To Board. A Lot Owner may, subject to mutual agreement of the parties, and subject to the provisions of this Article, sell his Lot to the Association, or its designee. Any such purchase by the Association or any other purchase or lease of any Lot by the Association in accordance with the provisions of these Bylaws, including the purchase of a Lot which is to be sold at a foreclosure or other judicial sale, shall have the prior approval of Lot Owners holding at least two-thirds (2/3) of the total authorized vote, cast in person or by proxy in accordance with these Bylaws.

Section 9.3 Financing Of Purchased Lots By Board. Acquisition of Lots by the Board, or its designee, on behalf of all Lot Owners, may be made from the working capital and common charges in the hands of the Board, or if such funds are insufficient the Board may levy an assessment against each Lot Owner in proportion to his ownership in the Common Elements and facilities as a common charge, which assessment shall be enforceable in the same manner as provided herein for other common charges and subject to the lien for nonpayment thereof, or the Board, in its discretion, may borrow money to finance the acquisition of such Lots, provided, however, that no financing may be secured by an encumbrance or hypothecation of any property other than the Lots, together with the Allocated Interests, so to be acquired by the Board.

Section 9.4 Waiver Of Right Of Partition With Respect To Such Lots As Are Acquired By The Board, Or Its Designee, On Behalf Of All Lot Owners, As Tenants In Common. In the event that a Lot shall be acquired by the Association, or its designee, on behalf of all Lot Owners as tenants in common, all such Lot Owners shall be deemed to have waived all rights of partition with respect to such Lot.

Section 9.5 Gifts And Devises. Any Lot Owner shall be free to convey or transfer his Lot by gift, or to devise his Lot by will, or to pass the same by intestacy, without restriction.

Section 9.6 Payment Of Assessments. No Lot Owner shall be permitted to convey, mortgage, pledge, hypothecate or sell his Lot unless and until he shall have paid in full to the Board all unpaid common charges theretofore assessed by the Board against his Lot and until he shall have satisfied all unpaid liens against such Lot, except permitted mortgages. Notwithstanding the foregoing, a Lot Owner may convey or sell his Lot, subject to all other provisions of these Bylaws, to a purchaser who in writing assumes all unpaid common charges and who agrees to take such Lot subject to all unpaid liens against same or in accordance with the provisions of Article 7 hereof.

## ARTICLE 10

Condemnation

In the event of a taking on condemnation or by eminent domain of a part or all of the Common Elements and facilities, the award made for such taking shall be payable to the Board which shall disburse the proceeds of such award as provided in the Declaration.

## ARTICLE 11

Records

The Board shall keep or cause to be kept detailed records of the actions of the Board, minutes of the meetings of Lot Owners, and financial records and books of account of the Association, including a listing of receipts and expenditures, as well as a separate account for each Lot which, among other things, shall contain the amount of each assessment of common charges against such Lot, the date when due, the amounts paid thereon, and the balance remaining unpaid. A written report summarizing all receipts and expenditures of the Association shall be rendered by the Board to all Lot Owners and to all mortgagees of Lots who have requested the same promptly after the end of each fiscal year. The Board shall also cause such books and records to be audited at least annually by an independent auditor and furnish a copy of such audit report to all Lot Owners. Each Lot Owner and each mortgagee of a Lot shall be permitted to examine the books of account of the Association at the place such records are maintained during regular business hours on not less than 24 hours advance notice, but not more often than once in each quarter.

## ARTICLE 12

Amendments to Bylaws

12.1 Notice. Notice of the subject matter of a proposed amendment shall be included in the notice of a meeting at which a proposed amendment is to be considered.

12.2 Adoption. A resolution for the adoption of a proposed amendment may be proposed either by not less than a majority of the Board or by not less than one third of the members of the Association. Directors and members of the Association not present in person or by proxy at the meeting considering the amendment may express their approval in writing provided that such approval is delivered to the Secretary at or prior to the meeting. The approval must be by not less than a majority of the votes of members of the Association represented at a meeting at which a quorum has been attained.

12.3 Limitation. No amendment may be adopted which would eliminate, modify, prejudice, abridge, or otherwise adversely affect any rights, benefits, privileges or priorities granted or reserved to the Declarant or Eligible Mortgage Holders without the consent of said Declarant and Eligible Mortgage Holder in each instance. No amendment shall be made that is in conflict with the

Articles of Incorporation of the Association or Declaration without satisfaction of the requirements therein contained. So long as the Declarant controls the Association and the Federal Housing Administration (FHA) holds or insures any First Mortgage on a Lot, the Federal Housing Administration (FHA) shall have the right to veto any amendment to the Bylaws. Notwithstanding anything herein to the contrary, amendments to any provision of these Bylaws or the Articles of Incorporation for the Association dealing with the maintenance and ownership of any permanent wet detention pond on the Property shall not be effective until the amendment has been reviewed and approved by the governmental office having jurisdiction for watershed protection. No amendment to this Section shall be valid.

12.4 Execution and Recording. A copy of each amendment shall be attached to a certificate certifying that the amendment was duly adopted as an amendment to the Declaration and Bylaws, which certificate shall be executed by the President or Vice President and attested by the Secretary or Assistant Secretary of the Association with the formalities of a deed, or by the Declarant alone if the amendment has been adopted consistent with the provisions of the Declaration allowing such action by the Declarant. The amendment shall be effective when the certificate and a copy of the amendment are recorded in the Office of the Register of Deeds for Guilford County, North Carolina.

### ARTICLE 13

#### Architectural Control

No building, fence, or other structure shall be commenced or maintained upon the Common Elements, including the Limited Common Elements, nor shall any exterior addition, change or alteration therein be made until plans and specifications showing the nature, kind, shape, height, materials, and location of same shall have been submitted to and approved in writing as to harmony of external design and location in relation to the surrounding structure and topography by the Board or by any architectural committee appointed by the Board. All structures shall be of standard design employed by Declarant in the original construction of such amenities in the Townhome project. In the event the Board or its designated committee fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, approval will not be required, and this Article XIII shall be deemed to have been fully complied with. Provided that nothing herein contained shall be construed to permit interference with the development of the Townhome property by the Declarant.

### ARTICLE 14

#### Execution of Instruments and Seal

Section 14.1 Execution Of Instruments. All instruments of the Association shall be executed under seal by such officer or officers as the Board may designate, or as may be otherwise authorized.

Section 14.2 Seal. The seal of the Association shall contain the name of the Association, the word "Seal", the year of incorporation of the Association and such other words and figures as desired by the Board.

## ARTICLE 15

### Conflicts

These Bylaws are set forth to comply with the provisions of the North Carolina Planned Community Act, as amended. In case any of these Bylaws conflict with the provisions of said statute or of the Declaration, the provisions of said statute or of the Declaration, as the case may be, shall control.

## ARTICLE 16

### Miscellaneous

Section 16.1 Insurance Trustee. The Insurance Trustee, if any, shall be a bank (including a national banking association) qualified to do business in the State of North Carolina and so designated by the Board. The Board shall pay the fees and disbursements of any Insurance Trustee.

Section 16.2 Ad Valorem Taxes. Each Lot shall be deemed to be a separate parcel and shall be separately assessed and taxed. Each Lot Owner shall be liable solely for the amount of tax assessed against his Lot and shall not be affected by the consequences resulting from the tax delinquency of other Lot Owners. All tangible personal property owned by the Association in connection with the maintenance, upkeep and repair of the Common Elements shall be listed for said taxes in the name of and paid by the Association. Each Lot Owner is also responsible for his *pro rata* share of taxes assessed on his portion of the Common Elements, if any.

Section 16.3 Notices. All notices hereunder shall be sent by registered or certified mail to the Board c/o the Independent Manager, or if there is no Independent Manager, to the office of the Board, or to such other address as the Board may designate from time to time by notice in writing to all Lot Owners and to all mortgagees of Lots. All notices to any Lot Owner shall be sent by registered or certified mail to such address as may have been designated by him from time to time, by notice in writing, to the Board and in the absence of such notice, to the Lot at the Property. All notices to mortgagees of Lots shall be sent by registered or certified mail to their respective addresses, as designated by them from time to time, by notice in writing, to the Board. All notices shall be deemed to have been given when mailed, except notices of changes of address which shall be deemed to have been given when received.


Section 16.4 Invalidity. The invalidity of any part of these Bylaws shall not impair or affect in any manner the validity, enforceability or effect of the balance of these Bylaws.

Section 16.5 Captions. The captions herein are inserted only as a matter of convenience and for reference, and in no way define, limit or describe the scope of these Bylaws, or the intent of any provision thereof.

Section 16.6 Gender. The use of the masculine gender in these Bylaws shall be deemed to include the feminine gender and the use of the singular shall be deemed to include the plural, whenever the context so requires.

Section 16.7 Waiver. No restriction, condition, obligation or provision contained in these Bylaws shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches thereof which may occur.

TURLINGTON HOMEOWNERS  
ASSOCIATION, INC.

By:  SR.  
Name: MICHAEL P. WINDSTEAD, SR.  
Title: PRESIDENT