

BK 3163 PG 570

M.J.T.

Filed for record
Date 8-4-2003
Time 8:10 o'clock A.M.
JUDY G. PRICE, Register of Deeds
Union County, Monroe, North Carolina

36279

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
EASTWOOD WINGATE

This DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS is made July 18th 2003, by Eastwood Wingate, LLC, a North Carolina limited liability company with its principal office in Union County, North Carolina, hereafter called "DECLARANT."

DECLARANT is the owner of the real property comprising the subdivision known as "Eastwood Wingate," more particularly described on Exhibit A which is attached hereto and incorporated herein by reference, hereafter called "the Property." DECLARANT desires to impose upon the Property certain covenants, conditions and restrictions with regard to the use of the Property and with regard to use of certain segments of the Property.

DECLARANT hereby declares that the Property, and any additional property subjected to this Declaration by a Supplemental Declaration, shall be held, sold, used and conveyed subject to the following covenants, conditions, restrictions and easements, each and all of which shall run with the land comprising the Property, and each and all of which shall be binding upon, and inure to the benefit of, all parties having any right, title or interest in the Property or any part thereof, and their respective heirs, personal representatives, successors and assigns.

ARTICLE I
DEFINITIONS

1.2 Association: Eastwood Wingate Owners Association, Inc. The Association shall not have any of the rights, duties or functions set forth in this Declaration until such time as the Declarant (or following the termination of the Declarant Control Period, a majority of the Owners) shall file an amendment to these Declarations stating that the Association shall have the rights, duties and functions set forth herein. At such time as such amendment is filed, however, the Association shall have all of the rights, duties and functions set forth herein, and each Owner agrees to be bound by the terms regarding the Association set forth in these Declarations and the Bylaws, and by all actions of the Association from that point forward.

DRAWN BY AND MAIL TO:
Catherine A. Barnes
James, McElroy & Diehl, P.A.
600 S. College Street
Charlotte, North Carolina 28202

1.3 Board of Directors or "Board": The body responsible for administration of the Association, selected as provided in the Bylaws and generally serving the same role as a board of directors under corporate law.

1.4 Bylaws: The Bylaws of the Association, to be in the form attached hereto as Exhibit B and incorporated by reference, as they may be amended.

Declarant Control 1.5 Common Expenses: The actual and estimated expenses incurred, or anticipated to be incurred, by the Association for the general benefit of all Owners, including any reasonable reserve, as the Association may find necessary.

1.6 Common Features: All primary entry features and signage for the Eastwood Wingate community; and any roads within Eastwood Wingate until such time as the maintenance such road shall have been assumed by the appropriate governmental authority.

1.7 Dealer: A Person who deals in or sells manufactured homes.

1.8 Declarant: Eastwood Wingate, LLC and its successors and assigns; also, any person who takes title to any portion of the Property, or any interest therein, and who is designated as Declarant in a recorded instrument executed by Eastwood Wingate, LLC. If Eastwood Wingate, LLC or its successor or assign shall transfer its interest in the Property or assign its rights under this Declaration, the successor shall be substituted for such party and shall be entitled to exercise the rights of Declarant under this declaration of the Bylaws. Upon the termination of the Declarant Control Period, the Association shall be deemed to be vested with all rights and authority that is reserved to Declarant in these Declarations, and all references to "Declarant" herein shall thereafter be deemed to mean "the Association".

1.9 Declarant Control Period: The Period ending upon the earliest of: the date that 75% of the Lots are conveyed to Members; ten years from the date of this Declaration; or recordation in the Registry of an instrument executed by Declarant terminating the Class B membership and converting it to Class A membership.

1.10 Governing Documents: This Declaration, any Supplemental Declaration, the Articles of Incorporation of the Association, the Bylaws, and any rules lawfully issued by the Association.

1.11 HUD and VA: The Federal Housing Administration of the U.S. Department of Housing and Urban Development, and the Veteran's Administration, respectively. If either or both of these federal agencies shall hereafter cease to exist or perform the same or similar functions they now serve, references hereto to HUD or VA shall be deemed to mean and refer to such agency or agencies as may succeed to the duties and services now performed by either or both of these departments.

1.12 Lot: Any lot which is a numbered plot of land to be used for single-family manufactured home residential purposes shown upon any subdivision plat of the Property, or any portion of the Property, subject to this Declaration, and recorded in the Union County Registry.

1.13 Member: A Person that is subject and entitled to membership in the Association pursuant to Section 3.2.

1.14 Mortgage: A deed of trust, mortgage, deed to secure debt or any other form of security conveyance of real property.

1.15 Owner: One or more Persons who hold the record title to any Lot, but excluding in all cases any party holding an interest merely as security for the performance of an obligation.

1.16 Person: A natural person, a corporation, a partnership, a trustee, or any other legal entity.

1.17 Property: The real property described on Exhibit A, together with such additional property as may be subjected to this Declaration in accordance with Section 1.19.

1.18 Registry: The Office of the Register of Deeds for Union County

1.19 Supplemental Declaration: An instrument filed in the Office of the Register of Deeds of Union County, North Carolina, which subjects additional property to this Declaration or imposes additional restrictions on the land described in such instrument.

ARTICLE II EASEMENTS AND RESERVATIONS

2.1 Easements of Encroachment. There shall be reciprocal easements of encroachment, and for use of any such encroachment, between adjacent Lots due to the unintentional placement or shifting of the improvements thereon (in accordance with the terms of these restrictions) to a distance of no more than three feet, measured from any point on the common boundary along a line perpendicular to such boundary. Such an easement shall not exist if such encroachment occurred due to willful conduct on the part of, or with the consent of an Owner or occupant.

2.2 Easements for Utilities, Etc. There are hereby reserved unto Declarant (so long as Declarant owns any portion of the Property) and the Association, and their designees, access and maintenance easements upon, over and under all of the Property to the extent reasonably necessary for the purpose of installing, replacing and maintaining cable television systems, roads, drainage systems, street lights, signage and utilities. These easements shall not entitle the holders to install any of the foregoing over, under or through any existing structure on a Lot, and such installation shall occur only within 15 feet of the Lot boundary line unless otherwise consented to in writing by the Owner of the affected Lot, whose consent shall not unreasonably be withheld. Any damage to a Lot resulting from the exercise of these easements shall promptly be repaired by and at the expense of the Person exercising the easement. The exercise of these easements shall not unreasonably interfere with the use of any Lot and, except in an emergency, entry onto any Lot shall be made only after reasonable notice to the Owner or occupant. Declarant specifically grants to the local water supplier, electric company and natural gas supplier easements across the Property for ingress, egress, installation, reading, replacing, repairing and maintaining utility meters. However, this easement shall not extend to permitting entry into the structures on any Lot, nor shall any utilities be installed or relocated on the Property, except as approved by the Board or Declarant.

2.3 Utility and Drainage. An easement on each Lot is hereby reserved by Declarant for itself and its successors and assigns along, over, under and upon a strip of land ten feet in width along the lot lines of all Lots shown on recorded plats, in addition to such other easements as may appear on a recorded subdivision plat of the Lots. The purpose of these easements shall be to provide, install, maintain, construct and operate drainage facilities now or in the future and utility service lines to, from, over or for each of the Lots. Within these easements, no structure other material shall be placed which may interfere with the installation or maintenance of utilities, or which may change the direction or flow of drainage channels in the easements. The easement area and all improvements in it shall be maintained continuously by Owner, except for those improvements for which a public authority or utility company is responsible.

2.4 Emergency. There is hereby reserved without further assent or permit and to the extent allowed by law, a general easement to all firemen, ambulance personnel, police and security guards and all similar persons to enter upon the Property or any portion thereof, in the performance of their respective duties.

ARTICLE III THE ASSOCIATION

3.1 Function of Association: The Association shall be the entity responsible for management, maintenance and control of the Common Features. The Association shall perform its functions in accordance with the Governing Documents.

3.2 Membership: The Association shall have two classes of membership, Class A and Class B.

(a) Class A. The Class A Members of the Association shall be the Owners.

(b) Class B. The sole Class B Member shall be Declarant. The Class B shall convert to Class A membership upon the end of the Declarant Control Period.

3.3 Voting.

- (a) Class A Members shall be entitled to one vote per Lot;
- (b) The Class B Member shall be entitled to four votes per Lot.

ARTICLE IV
RESPONSIBILITY OF ASSOCIATION

4.1 Maintenance and Control. The Association shall manage and control the following, and shall keep them in good, attractive, and sanitary condition, order, and repair, pursuant to this Declaration and the Bylaws:

- (a) All primary entry features and signage for the Eastwood Wingate community;
- (b) Any roads within Eastwood Wingate until such time as the maintenance such road shall have been assumed by the appropriate governmental authority;

4.2 Personal Property and Real Property for Common Use. The Association may acquire, hold, and dispose of personal property and real property. Declarant or its designees may convey to the Association real estate located within the Property, personal property and other property interests. Such property shall be accepted by the Association and thereafter shall be maintained by the Association at its expense for the benefit of the Owners and occupants of the Property, subject to any restrictions set forth in the deed or other instrument transferring such property to the Association.

4.3 Enforcement. The Association may impose sanctions for violations of the Governing Documents in accordance with procedures set forth in the Bylaws, including reasonable monetary fines. In addition, the Association, in accordance with the Bylaws, may exercise self-help to cure violations, and may suspend any services it provides to any Member, or to any property subject to the control of a Member, who is more than 30 days delinquent in paying any assessment. All remedies set forth in the Governing Documents shall be cumulative of any remedies available at law or in equity. In any action to enforce the provisions of the Governing Documents, if the Association is awarded any monetary damages or any other legal or equitable relief, it shall be entitled to recover from the opposing party all costs reasonably incurred in such action. Any judgment awarding the Association monetary relief shall bear interest at the rate of eight percent.

4.4 Association Authority. Except as otherwise specifically provided in the Governing Documents or by law, all powers of the Association may be exercised by the Association without a vote of the membership.

4.5 Indemnification. The Association shall indemnify every officer and director against damages and expenses including legal fees reasonably incurred in connection with any action, suit, or other proceeding (including settlement of any suit, if approved by the then Board of Directors) to which he or she may be a party by reason of being an officer or director, except that such obligation to indemnify shall be limited to those actions as to which the liability of officers and directors is limited under the Articles of Incorporation and North Carolina law. This right to indemnification shall not be exclusive of any other rights to which an officer or director may be entitled.

ARTICLE V
USE RESTRICTIONS

5.1 Residential Use. All Lots shall be used for single-family residential purposes only. An Owner, in his discretion, may select as a residential dwelling, any conventionally built, modular or mobile home, provided (i) it complies with the Bylaws, local ordinances relating thereto, and any resolutions of the Association and (ii) it is not, at the time of erection or installation on the Lot, more than three (3) years old. Notwithstanding the foregoing sentence, during the Declarant Control Period, Declarant shall have the right to approve or disapprove any residential dwelling to be installed on any Lot. Prior to erecting any dwelling on any Lot, the Owner shall submit detailed drawings, plans, photographs and other information concerning or describing such dwelling to Declarant, which shall have 10 business days to approve or disapprove such dwelling. No dwelling shall be erected on any Lot until Declarant has approved the same. Failure of Declarant to respond within ten days of such submittal shall be deemed to be approval by Declarant. By acceptance of a Lot deed, the Lot owner acknowledges that any dwelling located on the Lot is included in the real

property title of the unit, and is subject to any and all liens of mortgages, taxes, and assessments relative thereto. Each Lot owner shall administer, maintain, and repair, at his own expense, the Lot and all improvements located thereon.

5.2 Leasing. No Lot shall be rented by the owners thereof for transient or hotel purposes, which shall be defined as "any rental for any period less than six months."

5.3 Nuisances. No offensive or illegal activity shall be carried on upon any Lot, nor shall anything be done thereon which is or may become an annoyance or nuisance (as determined by Declarant) to any other Owner. No Lot shall be used for storing rubbish or anything that will cause such Lot to appear unsightly; nor shall anything be kept upon any Lot that will emit a foul odor or cause a noise that might disturb the peace of the occupants of surrounding Lots. However, this shall not prohibit temporary deposits of trash upon the specific day of pick-up by trash removal service units. If any Owner fails to keep his Lot free from unsightly objects or weeds, or to maintain the structures on each Lot in a manner satisfactory to the Declarant, the Declarant may, five days after posting a notice on such Lot or mailing a notice to the Owner thereof requesting the Owner to comply with the requirements of this paragraph, enter and remove all such unsightly objects or weeds at Owner's expense and Owner, by acquiring any Lot subject to this Declaration, agrees to pay such costs incurred by Declarant in the enforcement of this paragraph promptly upon demand. No such entry as provided herein shall be deemed a trespass.

5.4 Individual Responsibility. Each Owner shall maintain that Owner's Lot and all improvements on the Lot in a manner consistent with the all applicable covenants.

5.5 Location of Buildings and Structures. No building (which shall not include eaves, steps and uncovered porches or terraces) shall be located nearer to the any lot line than the building setback line as shown on any recorded maps of the Lot. No structure shall be erected on any easement described within this document or shown on any record map of the Lot. Any deviation from the building line requirements not in excess of ten percent thereof shall not be construed as a violation of the building line requirements as long as such deviation does not violate any local ordinance. No structure shall be located on a Lot in such a manner that it will interfere with the use and maintenance of any utility or drainage easement.

5.6 Animals and Pets. No animals, livestock and poultry of any kind shall be raised, bred or maintained on any Lot except generally accepted household pets, which may be kept thereon for the pleasure of the occupants but not for commercial use, and no more than two pets over the age of six months shall be permitted at any time. In no instance shall household pets become a nuisance to other Owners.

5.7 Signs. No advertising signs of any type or kind shall be erected, placed or permitted to remain upon or above any Lot or Common Area with the exception of a single sign "For Rent" or "For Sale," which sign shall not exceed two feet by three feet and shall refer only to the premises on which displayed, there being only one sign to a Lot. Notwithstanding, Declarant may erect and place signs of any size or shape on any unsold Lot. Declarant shall also have the right of ingress, egress and regress over the aforesaid Lots in order to maintain and replace any such signs until 100% of the Lots have been conveyed by Declarant.

5.8 Clotheslines, Garbage Cans, Etc. All clothes lines, garbage cans, lawn mowers, stored materials, unlicensed or inoperable vehicles, and similar equipment shall be kept in an enclosed structure or adequately screened by planting or fencing, so as to conceal the same from the view of neighboring Owners and from the view in front of the residence. Trash incinerators shall not be permitted on any Lot.

5.9 Antennas. No freestanding radio or television transmission or reception towers, antennas, dishes or discs shall be erected on a Lot. Radio and television antennas not exceeding seven and one-half feet in height above the roofline of the residence and dishes or disks not exceeding three feet in diameter and not visible from the street in front of the residence shall be allowed to be attached to the structure of the residence only.

5.10 Walls, Fences and Hedges. Walls and fences are permitted as long as both sides of such structures are constructed of identical materials and identical designs. For masonry walls, no exposed concrete block will be permitted. Hedges shall be maintained in a neatly trimmed and clean condition on both sides. All walls, fences, and hedges shall comply with all local ordinances and shall not be located within setbacks or sight triangles as described herein or shown on record maps of the Property.

5.11 Pool. Pools shall be permitted upon Lots but such pools must be located directly behind the residence of each Lot, and screened from view by a six-foot privacy fence.

5.12 Driveways and Parking Areas. Only driveways and parking areas constructed of gravel, asphalt, concrete or brick shall be permitted upon any Lot.

5.13 Vehicles, Boats and Trailers. No vehicles, boats, trailers, recreational vehicles or similar items shall be allowed to remain upon any Lot unless they are parked upon driveways constructed of gravel, asphalt, concrete or brick.

5.14 Use of Outbuildings and Similar Structures. No structure of a temporary nature shall be erected or allowed to remain on any Lot. Provided, further, this paragraph shall not be construed to prevent Owners from constructing a permanent detached garage or carport if constructed in conformity to and in harmony with existing structures located on the Lot, and if not located within any setbacks or easements. In addition, one commercially manufactured metal building no larger than 10 feet by 10 feet shall be permitted upon a Lot if not located within any setbacks or easements, and if located behind the rear wall of the residence on such Lot.

5.15 Basketball Goals and Mailboxes. Basketball goals shall be permitted on a Lot if placed a minimum of twelve feet from the street and placed outside of the public right-of-way, and kept in a neat and orderly condition. All mailboxes are to be constructed of break-away materials as approved by the North Carolina Department of Transportation, such as 4" x 4" wooden posts or small diameter metal posts.

5.16 Subdivision of Lots. No Lot shall be subdivided by sale or otherwise.

5.17 Corner Lots. Any dwelling erected on a Lot other than a corner Lot shall face the street on which the Lot abuts; on corner Lots dwellings may be erected so as to face the intersection of the two streets on which the Lot abuts.

5.18 Fire. In the event any home or structure within this subdivision is destroyed or partially destroyed by fire, act of God, or as a result of any other act or thing, said damage must be repaired or replaced within twelve months after such damage or destruction.

5.19 Declarant's Consent to Sales Material. Until all of the Lots have been conveyed by Declarant, all sales, promotional and advertising materials, and all forms of deeds, contracts for sale, and other closing documents for the sale of Lots by any Dealer shall be subject to the prior approval of Declarant, which approval shall not be unreasonably withheld. Declarant shall deliver written notice to any Dealer of Declarant's approval or disapproval of all such materials and documents within thirty (30) days of receipt of such materials and documents and, if disapproved, the specific changes requested. If Declarant fails to so notify any Dealer within such thirty (30) day period, Declarant shall be deemed to have waived any objections to such materials and documents and to have approved the foregoing. Upon disapproval, the foregoing procedures shall be repeated until approval is obtained or deemed to be obtained. ARTICLE VI
INSURANCE

6.1 Individual Insurance. By virtue of taking title to a Lot, each Owner covenants and agrees with all other Owners and with the Association to carry property insurance for the full replacement cost of all insurable improvements on his or her Lot, less a reasonable deductible, and liability insurance. Each Owner further covenants and agrees that in the event of damage to or destruction of structures on his Lot, the Owner shall proceed promptly to repair, replace or reconstruct in a manner consistent with the original structure and these Declarations. Alternatively, the Owner shall clear the Lot all debris and ruins and maintain the Lot in a neat and attractive, landscaped condition. The Owner shall pay any costs which are not covered by insurance proceeds.

ARTICLE VII AMENDMENTS TO DECLARATIONS

7.1 Amendments and Termination.

(a) Prior to Termination of Declarant Control Period. Until termination of the Declarant Control Period, these Declarations may be amended only as follows: (i) Declarant may amend to correct minor and clerical errors, as

determined by Declarant, without approval of Owners; and (ii) Declarant may amend this Declaration for any purpose after receiving the approval of at least two-thirds of the Members.

(b) Following Termination of Declarant Control Period. Except as otherwise specifically provided above and elsewhere in this Declaration following termination of the Declarant Control Period, this Declaration may be amended only by the affirmative vote or written consent, or any combination thereof, of Members representing 75% of the total Class A votes in the Association.

(c) Effective Date and Validity. To be effective, any amendment or supplement must be recorded in the Registry.

ARTICLE VIII ASSESSMENTS

8.1 Assessments. The Association is hereby authorized to levy assessments for expenses incurred or anticipated to be incurred by the Association in performing its duties and exercising its powers under the Governing Documents. No Owner may exempt himself from liability for assessments by any means.

(a) The expenses above described shall specifically include, but not be limited to expenses incurred in: (i) maintaining those areas which are the responsibility of the Association; (ii) enforcing compliance with the Governing Documents; (iii) complying with the Association's indemnification obligations under Section 4.5; (iv) managing the Association; (v) engaging professional assistance; and (vi) such other expenses as the Board of Directors deems necessary to keep the Property in good condition.

(b) There shall be three types of assessments: (i) Base Assessment to fund Common Expenses as described in Section 8.2; (ii) Special Assessments as described in Section 8.3; and (iii) Specific Assessments as described in Section 8.4. Each Owner is deemed to agree to pay these assessments.

(c) All assessments, together with interest at a 8% (computed from the date the delinquency first occurs), costs, and reasonable attorney's fees (collectively "charges"), shall be a continuing lien upon the Property of the defaulting owner each Lot until paid, as more particularly provided in Section 8.6. Such assessments shall be the personal obligation of the Person who was the Owner of the Lot at the time the assessment arose. Upon transfer of title to the Lot, the grantee shall be jointly and severally liable for any assessments and charges due at the time of the conveyance.

(d) The Association shall, upon request, furnish to any Member or Owner liable for any type of assessment a certificate in writing signed by an officer of the Association setting forth whether such assessment has been paid. The Association may require the payment of a processing fee for the issuance of such certificate.

(e) All Base Assessments for each calendar year shall be due on January 1 of that year. Such Base Assessments shall be payable on a quarterly basis with one-fourth of the annual Base Assessment payable each January 1, April 1, July 1 and October 1. Special Assessments and Specific Assessments shall be due and payable as determined by Declarant or by the Association. If any person becomes delinquent on any assessment, the Association may accelerate all assessments due for that calendar year in addition to the other assessments owed, and may require that all assessments whatsoever be paid in full immediately.

8.2 Base Assessments.

(a) At least 45 days before the beginning of each fiscal year, the Association shall prepare a budget covering the estimated Common Expenses for the coming year. The total amount to be raised through the Base Assessments shall be assessed against each Lot in an amount derived by multiplying the Base Assessment by a fraction, the numerator of which is one and the denominator of which is the total number of Lots subject to the assessment.

(b) The Association shall send a copy of the budget and notice of the amount of the Base Assessments due for the following year to each Member at least 20 days prior to the beginning of the fiscal year for which it is to be effective. Such budget and assessment shall become effective unless disapproved at a meeting by Members representing at least 75%

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of the total Class A votes in the Association, and by the Class B Member, if such exists. There shall be no obligation to call a special meeting for the purpose of considering the budget except on petition of the Members as provided for in the Bylaws, which petition must be presented to the Association within 10 days after delivery of the notice of assessments.

(c) If the proposed budget is disapproved or the Association fails for any reason to determine the budget for any year, then until such time as a budget is determined, the budget in effect for the immediately preceding year shall continue for the current year.

8.3 Special Assessments. In addition to other authorized assessments, the Association may levy Special Assessments from time to time to cover unbudgeted expenses or expenses in excess of those budgeted. Except as otherwise specifically provided in this Declaration, any Special Assessment shall require the affirmative vote or written consent of Members representing at least 51% of the total Class A votes, and the affirmative vote or written consent of the Class B Member, if any. Special Assessments shall be payable in such manner and at such times as determined by the Association.

8.4 Specific Assessments. The Association shall have the power to levy a Specific Assessment against any Lot to reimburse the Association for costs incurred in bringing any Lot into compliance with the provisions of the Governing Documents, provided the Association gives notice to the Owner and an opportunity for a hearing.

8.5 Lien for Assessments. The Association shall have a lien against each Lot to secure payment of delinquent assessments. Such lien shall be superior to all other liens, except (a) the liens of all taxes, bonds, assessments, and other levies which by law would be superior, and (b) the lien or charge of any first Mortgage of record made in good faith and for value. Such lien, when delinquent, may be enforced by suit, judgment and foreclosure in the same manner as materialmen's liens under North Carolina law. The Association may bid for the Lot at the foreclosure sale and acquire, hold and convey the Lot. The Association may sue for unpaid Common Expenses and costs without foreclosing or waiving the lien securing the same. The transfer of any Lot shall not affect the assessment lien or relieve such Lot from the lien for any subsequent assessments, except that the transfer of a Lot pursuant to foreclosure of the first Mortgage shall extinguish the lien as to any installments of such assessments due prior to such transfer. A purchaser of a Lot who obtains title pursuant to foreclosure of the Mortgage shall not be personally liable for assessments on such Lot due prior to such acquisition of title. Such unpaid assessments shall be reallocated among all Lots, and may be added to and collected as part of the following year's Base Assessment against such Lots.

8.6 Date of Commencement of Assessments. The obligation to pay assessments shall commence as to each portion of the Property on the first day of the month following: (a) the month in which it is made subject to this Declaration, or (b) the month in which the Association first determines a budget and levies assessments pursuant to this Article, whichever is later.

8.7 Failure to Assess. Failure of the Association to fix assessment amounts or rates or to deliver or mail each Member an assessment notice shall not be deemed a waiver, modification, or a release of any Owner from the obligation to pay assessments. In such event, each Member or Owner shall continue to pay Base Assessments on the same basis as for the last year for which an assessment was made, if any, until a new assessment is made, at which time the Association may retroactively assess any shortfalls in collections.

ARTICLE IX
SPECIAL PROVISIONS WITH REGARD TO HUD AND VA

Notwithstanding any provision of these Declarations, the following shall apply: For so long as there is a Class B Member, prior approval of HUD/VA is required to undertake any of the following: annexation of additional properties to the Property; dedication of the Common Area; or amendment of the Original Declaration or any supplements thereto; failure on the part of any Member to pay any assessments set forth in Article VIII of the Declaration shall not constitute a default under any mortgage given by that Owner; the Association shall require the approval of at least two-thirds of the Members (excluding the Class B Member) prior to conveying or mortgaging any Common Area; and if ingress or egress to any the residence of any Member is through a Common Area, any conveyance or encumbrance of such Common Area is subject to the Member's easement.

ARTICLE X
GENERAL PROVISIONS

10.1 Duration. Unless earlier terminated by an instrument signed by Members holding seventy-five percent of the Class A votes and by the Class B Member, if any, and recorded in the Registry, these covenants, conditions and restrictions shall be binding for a term of twenty years from the date this Declaration is recorded. After such time, this Declaration shall be automatically extended for successive periods of five years, unless an instrument signed by Members holding a majority of the Class A votes has been recorded in the Registry within the year preceding any such extension, agreeing to amend or terminate this Declaration.

10.2 Enforcement. If any Owner shall violate any of these restrictions, it shall be grounds for an action to recover sums due, for damages or injunctive relief, or both, maintainable by Declarant, the Association, or by an aggrieved Owner. Any failure by Declarant, the Association or any other Owner to enforce any of the foregoing restrictions shall not be deemed a waiver of their right to do so thereafter.

10.3 Severability. The provisions of this Declaration are severable and the invalidity of any provision hereof shall not be deemed to affect in any manner the validity, enforceability or effect of the remainder hereof.

10.4 Association as Successor to Declarant. Upon the termination of the Declarant Control Period, the Association shall be deemed to be vested with all rights and authority that is reserved to Declarant in these Declarations, and all references to "Declarant" herein shall thereafter be deemed to mean "the Association".

10.5 Perpetuities. If any of the covenants, conditions, restrictions or other provisions of this Declaration shall be unlawful, void or voidable for violation of the rule against perpetuities except for this provision, then such provisions shall continue only until twenty-one years after the death of the last survivor of the now living descendants of William K. Diehl, Jr., of Charlotte, North Carolina.

10.6 Use of the Words "Eastwood Wingate." No Person shall use the words " Eastwood Wingate " or any derivative in any printed or promotional material without Declarant's prior written consent. However, Dealers may use the term " Eastwood Wingate " in printed or promotional matter where such term is used solely to specify that particular property is located within Eastwood Wingate, and the Association shall be entitled to use the words " Eastwood Wingate " in its name.

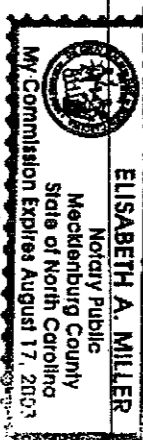
10.7 Notice of Sale or Transfer of Title. Any Owner desiring to sell or otherwise transfer title to his or her Lot, or who does sell or transfer his Lot, shall give the Board at least seven days' prior written notice of the name and address of the purchaser or transferee, the date of such transfer of title, and such other information as the Board may reasonably require. The transferor shall continue to be jointly and severally responsible with the transferee for all obligations of the Owner of the Lot, including assessment obligations, until the date upon which such notice is received by the Board, notwithstanding the transfer of title.

ARTICLE XI: JOINER OF TRUSTEES IN AND
OWNERS AND HOLDERS OF DEEDS OF TRUST

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11.1 Joiner. _____, Trustee under, and _____, owner and holder of, the deed of trust recorded in Book _____ at page _____ of the Registry for themselves and for their respective successors and assigns, join in this Declaration for the purposes of consenting to it and being bound by its terms.

HEREBY ORDERED, SEAL and the date first stated above.



EASTWOOD WINGATE, LLC
By: [Signature] (SEAL)
Title: Manager

STATE OF NORTH CAROLINA
COUNTY OF Mecklenburg

I, a Notary Public of the County and State aforesaid, certify that Gordon Lewchuk, Manager of EASTWOOD WINGATE, LLC, a limited liability company, personally appeared before me this day and acknowledged the execution of the foregoing instrument on behalf of the company. Witness my hand and official stamp or seal, this 18 day of July, 2003

My commission expires: August 17, 2003
[Signature]
Notary Public

STATE OF NORTH CAROLINA (PRIVATE)
COUNTY OF Cabarrus

I, a Notary Public for said County and State, certify that Pedro M. Vogel, Trustee, personally came before me and acknowledged the execution of the foregoing instrument. Witness my hand and official stamp or seal, this 29 day of July, 2003

My commission expires: 3-6-05
[Signature]
Notary Public

First Chatham Bank

By: [Signature]
Title: Vice President

STATE OF NORTH CAROLINA
COUNTY OF Mecklenburg
I, a Notary Public of the County and State aforesaid, certify that Kavonne Chaney, Vice President of First Chatham Bank, a banking corporation, personally appeared before me this day and acknowledged the execution of the foregoing instrument on behalf of the company. Witness my hand and official stamp or seal, this 29 day of July, 2003

My commission expires: 2-5-06
[Signature]
Notary Public

EXHIBIT A

Lying and being in Union County, North Carolina, and being that property entitled Eastwood Subdivision, as shown on map of Eastwood Subdivision recorded in Cabinet H, Page 78 in the Union County Public Registry.

NORTH CAROLINA-UNION COUNTY

The foregoing certificate(s) of

Elizabeth A. Middleton
Deborah S. Weaver and
C. S. Monica

Notary (ies) Public

Have certified
to be correct.

JUDY G. PRICE, REGISTER OF DEEDS

BY Deborah C. Price
Asst. DEPT

EXHIBIT B

BY-LAWS
OF

EASTWOOD WINGATE OWNERS ASSOCIATION, INC

ARTICLE I - Name, Principal Office and Definitions

- 1.1 Name. The name of the Corporation shall be Eastwood Wingate Owners Association, Inc. (for convenience sometimes referred to as the "Association").
- 1.2 Principal Office. The principal office of the Association shall be located in Union County, North Carolina. The Association may have such other offices, either within or outside the State of North Carolina, as the Board of Directors may determine or as the officers of the Association may require.
- 1.3 Definitions. The words used in these By-Laws shall generally be given their normal, commonly understood definitions unless otherwise specified. Capitalized terms shall have the same meaning set forth in the Declaration of Covenants, Conditions and Restrictions for Homestead, recorded or to be recorded in the Office of the Register of Deeds for Mecklenburg County, North Carolina, as amended from time to time (the "Declaration").

ARTICLE II - Membership, Meetings, Voting

- 2.1 Membership. The Association initially shall have two classes of membership, Class A and Class B, as more fully set forth in the Declaration, and the terms in the Declaration pertaining to membership are incorporated herein by reference.
- 2.2 Place of Meetings. Meetings of the Association shall be held at the principal office of the Association or at such other suitable place convenient to the Members as may be designated by the Board of Directors either within the Property or as convenient thereto as possible and practical.
- 2.3 Annual Meetings. The first meeting of the Members of the Association, whether a regular or special meeting, shall be held within thirty (30) days after the date upon which the Class B Member shall no longer have the right to appoint all members of the Board. Subsequent regular annual meetings shall be set by the Board so as to occur on or within 60 days after the close of the Association's fiscal year on a date and at a time set by the Board of Directors.
- 2.4 Special Meetings. The President may call special meetings. In addition, it shall be the duty of the President to call a special meeting if so directed by resolution of the Board or upon a petition signed by Members representing at least 25 percent of the total Class A votes of the Association.
- 2.5 Notice of Meetings. Written or printed notice stating the place, day, and hour of any meeting of the Members shall be delivered, either personally or by mail, to each Member entitled to vote at such meeting, not less than ten nor more than 50 days before the date of such meeting, by or at the direction of the President or the Secretary or the officers or persons calling the meeting.
- In the case of a special meeting or when otherwise required by statute or these By-Laws, the purpose or purposes for which the meeting is called shall be stated in the notice. No business shall be transacted at a special meeting except as stated in the notice.
- If mailed, the notice of a meeting shall be deemed to be delivered when deposited in the United States mail addressed to the Member at its address as it appears on the records of the Association, with postage prepaid.
- 2.6 Waiver of Notice. Waiver of notice of a meeting of the Members shall be deemed the equivalent of proper notice. Any Member may, in writing, waive notice of any meeting of the Members, either before or after such meeting. Attendance at a meeting by a Member shall be deemed waiver by such Member of notice of the time, date, and place thereof, unless such Member specifically objects to lack of proper notice at the time the meeting is called to order. Attendance at a special meeting also shall be deemed waiver of notice of all business transacted unless an objection on the basis of lack of proper notice is raised before the business is put to a vote.
- 2.7 Adjournment of Meetings. If any meeting of the Association cannot be held because a quorum is not present, a majority of the Members who are present at such meeting may adjourn the meeting to a time not less than five nor more than 30 days from the time the original meeting was called. At the reconvened meeting, if a quorum is present, any

business may be transacted which might have been transacted at the meeting originally called. If a time and place for reconvening the meeting is not fixed by those in attendance at the original meeting or if for any reason a new date is fixed for reconvening the meeting after adjournment, notice of the time and place for reconvening the meeting shall be given to Members in the manner prescribed for regular meetings.

The Members present at a duly called or held meeting at which a quorum is present may continue to do business until adjournment, notwithstanding the withdrawal of enough Members to leave less than a quorum, provided that any action taken is approved by at least a majority of the votes required to constitute a quorum.

2.8 Voting. The voting rights of the Members shall be as set forth in the Declaration, and such voting rights provisions are specifically incorporated herein by reference. In the case of any action requiring the written consent of a Member, such consent, if given, shall be executed by the Member or on behalf of the Member by its duly authorized partner, officer or Manager, as the case may be.

2.9 Proxies. At all meetings of Members, each Member may vote in person (if a corporation, through any officer or director duly authorized by its board of directors, if a partnership, through a general partner duly authorized, and if a limited liability company, through a manager duly authorized) or by proxy. All proxies shall be in writing, signed by the Member, dated and filed with the Secretary of the Association prior to any meeting for which it is to be effective. Every proxy shall be revocable and shall automatically cease upon receipt by the Secretary of written revocation or upon adjournment of the meeting at which such proxy was used for purposes of voting.

2.10 Majority. As used in these By-laws, the term "majority" shall mean more than 50 percent of the total number of persons or votes, as the context may indicate.

2.11 Quorum. Except as otherwise provided in these By-Laws or in the Declaration, the presence, in person or by proxy, of Members representing a majority of the total votes in the Association shall constitute a quorum at all meetings of the Association.

2.12 Conduct of Meetings. The President shall preside over all meetings of the Association, and the Secretary shall keep the minutes of the meetings and record in a minute book all resolutions adopted such meetings, as well as a record of all transactions occurring at meetings.

2.13 Action Without a Meeting. Any action required or permitted by law to be taken at a meeting of the Members may be taken without a meeting, without prior notice and without a vote, if written consent specifically authorizing the proposed action is signed by or on behalf of all Members entitled to vote on such matter. Such consents shall be filed with the minutes of the Association, and shall have the same force and effect as a unanimous vote of the Member at a meeting.

ARTICLE III - Board of Directors: Number, Powers, Meetings

A. Composition and Selection.

3.1 Governing Body: Composition. The affairs of the Association shall be governed by a Board of Directors. Each director shall have one equal vote. Any officer or director of a Member, or any other individual specifically authorized by the Member to act on its behalf in a written instrument filed with the Secretary of the Association, shall be eligible to serve as a director, provided such officer, director or individual is 18 years of age or older. Upon termination of any such individual's relationship with the Member, such individual shall be deemed to have resigned from the Board and a successor shall be appointed in the manner provided in Section 3.4.

3.2 Number of Directors. The Board shall consist of from three to seven directors, as specified in Section 3.3. The initial Board shall consist of the three individuals identified in the Articles of Incorporation.

3.3 Selection of Directors.

(a) Initially, all members of the Board shall be appointed by the Class B Member acting in its sole discretion, shall serve at the pleasure of the Class B Member and may be replaced by the Class B Member at any time.

(b) At such time as 75 percent of the Property subject to the this Declaration is owned by Persons other than Declarant or a Builder, or such earlier time that Declarant shall elect in writing all appointees of the Class B Member shall resign. At such time, the directors shall be elected by vote of the Members at a special meeting called for such purpose.

(c) Directors may be appointed or elected to serve any number of consecutive terms.

B. Meetings.

3.4 Regular Meetings. Regular meetings of the Board may be held at such time and place as shall be determined from time to time by a majority of the directors, but at least one such meeting shall be held during each fiscal year. Notice of the time and place of the meeting shall be communicated in writing to directors not less than four days prior to the meeting; provided, however, notice of a meeting need not be given to any director who has signed a waiver of notice or a written consent to holding of the meeting.

3.5 Special Meetings. Special meetings of the Board shall be held when called by written notice signed by the President of the Association or by any two directors. The notice shall specify the time and place of the meeting and the nature of any special business to be considered. The notice shall be given to each director by one of the following methods: (a) by personal delivery; (b) written notice by first class mail, postage prepaid; (c) by telephone communication, either directly to the director or to a person at the director's office or home who would reasonably be expected to communicate such notice promptly to the director; or (d) by telegram, charges prepaid. All such notices shall be given at the director's telephone number or sent to the director's address as shown on the records of the Association. Notices sent by first class mail shall be deposited into a United States mailbox at least four days before the time set for the meeting. Notices given by personal delivery, telephone, or telegraph shall be delivered, telephoned, or given to the telegraph company at least 72 hours before the time set for the meeting.

3.6 Waiver of Notice. The transactions of any meeting of the Board, however called and noticed or wherever held, shall be as valid as though taken at a meeting duly held after regular call and notice if (a) a quorum is present, and (b) either before or after the meeting each of the directors not present signs a written waiver of notice, a consent to holding the meeting, or an approval of the minutes. The waiver of notice or consent need not specify the purpose of the meeting. Notice of a meeting shall also be deemed given to any director who attends the meeting without presenting before or at its commencement about the lack of adequate notice.

3.7 Quorum of Board of Directors. At all meetings of the Board of Directors, a majority of the directors shall constitute a quorum for the transaction of business. The votes of a majority of the directors present at a meeting at which a quorum is present shall constitute the decision of the Board; provided, so long as the Board consists of only three directors, any decision of the Board shall require the vote of two directors. A meeting at which a quorum is initially present may continue to transact business, notwithstanding the withdrawal of directors, if any action taken is approved by at least a majority of the required quorum for that meeting. If any meeting of the Board cannot be held because a quorum is not present, a majority of the directors who are present at such meeting may adjourn the meeting to a time not less than five nor more than 30 days from the date the original meeting was called. At the reconvened meeting, if a quorum is present, any business which might have been transacted at the meeting originally called may be transacted without further notice.

3.8 Compensation. No director shall receive any compensation from the Association for acting as such unless consented to in writing by all Members. No director appointed by the Class B Member shall be entitled to compensation for serving as such during the Declarant Control Period. A director may be reimbursed for expenses incurred on behalf of the Association upon approval of a majority of the other directors.

3.9 Conduct of Meetings. The President shall preside over all meetings of the Board, and the Secretary shall keep a minute book of Board meetings, recording all Board resolutions and all transactions and proceedings occurring at such meetings.

3.10 Open Meetings. Subject to the provisions of Section 3.15, all meetings of the Board shall be open to all Members, and the officers, directors and authorized representatives of the Members. Attendees other than directors may not participate in any discussion or deliberation unless permission to speak is requested on his or her behalf by a director. In such case, the President may limit the time any such individual may speak to not less than two minutes. Notwithstanding the above, the President may adjourn any meeting of the Board and reconvene in executive session, excluding persons other than directors, to discuss matters of a sensitive nature, such as pending or threatened litigation, personnel matters, etc.

3.11 Action Without a Formal Meeting. Any action to be taken at a meeting of the directors or any action that may be taken at a meeting of the directors may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the directors, and such consent shall have the same force and effect as a unanimous vote.

C. Powers and Duties.

3.12 Powers. The Board of Directors shall have all the powers necessary for the administration of the Association's affairs and for performing all responsibilities and exercising all rights of the Association as set forth in the Declarations, the Articles and these By-Laws and as provided by law. The Board may do or cause to be done all acts and things as are not by the Declarations, Articles, or these By-Laws directed to be done and exercised exclusively by the membership.

3.13 Duties. The duties of the Board shall include, without limitation:

- (a) preparation and adoption of annual budgets for the Common Expenses and establishing each Unit's share of such Common Expenses;
- (b) establishing and levying assessments and fines on each Unit for its share of the Common Expenses and fines for failure to abide by the terms of the Declaration;
- (c) establishing the means and methods of collecting all assessments, and establishing the period of installment payments of the Base Assessment, if permitted to be paid in installments;
- (d) opening bank accounts on behalf of the Association and designating the authorized signatories;
- (e) collecting the assessments, depositing the proceeds in depositories which it shall approve, and using the funds collected as assessments for Common Expenses to operate the Association;
- (f) providing for the operation, care, upkeep and maintenance of the Common Area;
- (g) designating, hiring and dismissing the personnel necessary to carrying out the rights and responsibilities of the Association and, where appropriate, providing for the compensation of such personnel and for the purchase of equipment, supplies, and materials to be used by such personnel in the performance of their duties;
- (h) making and amending rules governing use and operation of the Property;
- (i) making or contracting for the making of repairs, additions and improvements to or alterations of the Common Area;
- (j) enforcing by legal means the provisions of the Declaration, and any other covenants applicable to the Property, these By-Laws, and the Association rules and bringing any proceedings which may be instituted on behalf of or against the Owners or Members concerning the Association;
- (k) mediating and arbitrating disputes between the Members and disputes between two or more Owners who are not members of the same Association arising out of interpretation, violation, or enforcement of or conflicts in the standards established under the Declarations, compliance with the standards set by the Association, or other matters as to which the Board determines it to be in the general interest of the Members to become involved;
- (l) obtaining and carrying property and liability insurance on the Common Area to the extent the Association is responsible for providing such insurance under the Declaration or any agreement relating to such property; and obtaining fidelity bonds on all persons responsible for handling funds on behalf of the Association, paying the cost of such insurance and bonds, and filing and adjusting claims, as appropriate;
- (m) paying the cost of all services rendered to or on behalf of the Association, as the Board may authorize;
- (n) keeping detailed books of account and operating records;
- (o) making available to any prospective purchaser, Owner and Mortgagee of a Unit and current copies of the Articles of Incorporation, the By-Laws, and Association rules, and charging such fees, if any, as the Board may establish to cover its printing and mailing costs; and
- (p) permitting utility suppliers to use portions of the Common Area as reasonably necessary to the ongoing development or operation of the Property.

3.14 Power of Class B Member to Disapprove Actions. So long as the Class B membership exists, the Class B Member shall have a right to disapprove any action, policy or program of the Association, the Board and any committee appointed by the Board which, in the sole judgment of the Class B Member, would tend to impair rights of Declarant or Builders under the Declaration or these By-Laws, or to interfere with development, construction, marketing or sale of any portion of the Property.

(a) The Class B Member shall be given advance written notice of ten (10) days of all meetings and proposed actions approved at meetings (or by written consent in lieu of a meeting) of the Association, the Board, or any committee. Such notice shall be given by certified mail, return receipt requested, or by personal delivery at the address it has registered with the Secretary of the Association, which notice complies as to the Board meetings with Sections 3.5, 3.6 and 3.7 of these By-Laws and which notice shall, except in the case of the regular meetings held pursuant to the By-Laws, set forth in reasonable particularity the agenda to be followed at said meeting.

(b) The Class B Member shall be given the opportunity at any such meeting to join in or to have its representatives or agents join in discussion from the floor of any prospective action, policy or program which would be subject to the right of disapproval set forth herein.

No action, policy or program subject to the right of disapproval set forth herein shall become effective or be implemented until and unless the requirements of subsections (a) and (b) above have been met.

The Class B Member, its representatives or agents shall make its concerns, thoughts, and suggestions known to the Board and/or the members of the subject committee. The Class B Member, acting through any officer, director, agent or authorized representative, may exercise its right to disapprove at any time within ten days following the meeting at which such action was proposed or, in the case of any action taken by written consent in lieu of a meeting, within ten days following receipt of written notice of the proposed action. This right to disapprove shall not include a right to require any action or counteraction on behalf of the Association, the Board or any committee, except to the extent necessary to reverse the disapproved action.

3.15 Management The Board may employ for the Association a professional management agent or agents, to perform such duties and services as the Board shall authorize, at such compensation as the Board may establish; provided, such compensation shall be competitive with fees generally charged for the provision of similar services to comparable developments or to entities with comparable responsibilities in the metropolitan area of Charlotte, North Carolina. The Board may delegate to the managing agent or manager, subject to the Board's supervision, such powers as are necessary to perform the manager's assigned duties but shall not delegate policymaking authority or those duties set forth in subsections (a), (b), (k) and (p) of Section 3.14. Declarant, or an affiliate of Declarant, may be employed as managing agent or manager.

The Association shall not be bound, either directly or indirectly, by any management contract executed during the Declarant Control Period unless such contract contains a right of termination exercisable by the Association, with out without cause and without penalty, at any time after termination of the Declarant Control Period upon not more than 90 days' written notice.

The Board may delegate to one of its members the authority to act on its behalf on all matters relating to the duties of any managing agent which might arise between meetings of the Board.

3.16 Accounts and Reports The following management standards of performance shall be followed unless the Board by resolution specifically determines otherwise:

- (a) cash basis accounting, as defined by generally accepted accounting principles, shall be employed;
- (b) accounting and controls should conform to generally accepted accounting principles;
- (c) cash accounts of the Association shall not be commingled with any other accounts;
- (d) no remuneration shall be accepted by the managing agent from vendors, independent contractors, or others providing goods or services to the Association, whether in the form of commissions, finder's fees, service fees, prizes, gifts, or otherwise; any thing of value received shall benefit the Association;
- (e) any financial or other interest which the managing agent may have in any firm providing goods or services to the Association shall be disclosed promptly to the Board of Directors;
- (f) commencing at the end of the month in which the first Unit is sold and closed to a Person other than a Builder, financial reports shall be prepared for the Association at least quarterly containing:
 - (i) an income statement reflecting all income and expense activity for the preceding period on an accrual basis;
 - (ii) a statement reflecting all cash receipts and disbursements for the preceding period;
 - (iii) a variance report reflecting the status of all accounts in an "actual" versus "approved" budget format;
 - (iv) a balance sheet as of the last day of the preceding period; and
 - (v) a delinquency report listing all Members and Owners who are delinquent in paying any assessments at the time of the report and describing the status of any action to collect such assessments which remain delinquent (Any assessment or installment thereof shall be considered to be delinquent on the 15th day following the due date unless otherwise specified by Board resolution).
- (g) an annual report consisting of at least the following shall be distributed to all Members within 120 days after the close of the fiscal year: (1) a balance sheet; (2) an operating (income) statement; and (3) a statement of changes in financial position for the fiscal year. Such report shall be prepared on an audited or reviewed basis, as the Board determines, by an independent public accountant, provided, upon written request of any holder, guarantor or insurer of any first

(5)

Mortgage on a Unit, the Association shall provide an audited financial statement. During the Declarant Control Period, the annual report shall include certified financial statements.

3.17 Borrowing. Subject to the prior written approval of Declarant for so long as Declarant shall own any portion of the Property, the Association shall have the power to borrow money for any purpose; provided, the Board shall obtain the written consent of Members entitled to cast a majority of the Class A votes in the event that the proposed borrowing is for the purpose of making discretionary capital improvements and the total amount of such borrowing exceeds or would exceed 25 percent of the budgeted Common Expenses of the Association for that fiscal year. No Mortgage shall be placed on any portion of the Common Area without the written consent of the Members.

3.18 Right to Contract. The Association shall have the right to contract with any Person for the performance of various duties and functions. This right shall include, without limitation, the right to enter into common management, operational or other agreements with any Member, trust, or condominium, cooperative, or other owners' or residents' association, within or outside the Property; provided, any common management agreement shall require the consent of a majority of the total number of the Board.

3.19 Enforcement. In addition to such other rights as are specifically granted under the Declaration, the Board shall have the power to impose reasonable fines for violation of any duty imposed under the Declaration or these By-Laws, which shall be assessed as a Specific Assessment against the Unit of the violating Owner or, in the case of a violating Member, shall be added to the total Base Assessments payable by such Member. In the event that any occupant, guest or invitee of a Unit violates the Declaration or these By-Laws and a fine is imposed, the fine shall first be assessed against the occupant; provided, however, if the fine shall first be assessed against the occupant; provided, however, if the fine is not paid by the occupant within the time period set by the Board, the Owner shall pay the fine upon notice from the Association. The failure of the Board to enforce any provision of the Declaration or these By-Laws shall not be deemed a waiver of the right of the Board to do so thereafter.

(a) Notice. Prior to imposition of any sanction hereunder, the Board or its delegate shall serve the alleged violator with written notice describing (i) the nature of the alleged violation, (ii) the proposed sanction to be imposed, (iii) a period of not less than ten days within which the alleged violator may present a written request for a hearing; and (iv) a statement that the proposed sanction shall be imposed as contained in the notice unless a challenge is begun within ten days of the notice. If a timely challenge is not made, the sanction stated in the notice shall be imposed.

(b) Hearing. If a hearing is requested within the allotted ten day period, the hearing shall be held in executive session affording the alleged violator a reasonable opportunity to be heard. Prior to the effectiveness of any sanction, proof of proper notice shall be placed in the minutes of the meeting. Such proof shall be deemed adequate if a copy of the notice, together with a statement of the date and manner of delivery, is entered by the officer, director, or agent who delivered such notice. The notice requirement shall be deemed satisfied if the alleged violator appears at the meeting. The minutes of the meeting shall contain a written statement of the results of the hearing and the sanction, if any, imposed. The Board may, but shall not be obligated to, suspend any proposed sanction if the violation is cured within the ten day period. Such suspension shall not constitute a waiver of the right to sanction future violations of the same or other provisions and rules by any Person.

(c) Appeal. If a hearing is conducted before any body other than the Board, the violator shall have the right to appeal the decision to the Board of Directors. To perfect this right, a written notice of appeal must be received by the Board within 30 days after the hearing date.

(d) Additional Enforcement Rights. The Board may elect to enforce any provision of the Declarations or the By-Laws by self-help or by suit to enjoin any violation or to recover monetary damages or both without the necessity of compliance with the procedure set forth above, and entry upon property for the purpose of exercising this right shall not be deemed a trespass. In any such action, to the maximum extent permissible, the Person responsible for the violation of which abatement is sought shall pay all costs, including reasonable attorney's fees actually incurred.

ARTICLE IV - Officers

4.1 Officers. The officers of the Association shall be a President, Vice President, Secretary and Treasurer. The President and Secretary shall be appointed from among the members of the Board. The Board may appoint such other officers, including one or more Assistant Secretaries and one or more Assistant Treasurers, as it shall deem desirable, such officers to have the authority and perform the duties the Board prescribes. Any two or more offices may be held by the same person, except the offices of President and Secretary.

- 4.2 Election and Term of Office. The Board shall elect the officers of the Association at its annual meeting.
- 4.3 Removal and Vacancies. Whenever in its judgment the best interests of the Association will be served, the Board may remove any officer, and may fill any vacancy in any office arising because of death, resignation, removal or otherwise for the unexpired portion of the term.
- 4.4 Powers and Duties. The officers of the Association shall each have such powers and duties as generally pertain to their respective offices, as well as such powers and duties as may from time to time specifically be conferred or imposed by the Board of Directors. The President shall be the chief executive officer of the Association. The Treasurer shall have primary responsibility for the preparation of the budget as provided for in the Declaration and may delegate all or part of the preparation and notification duties to a finance committee, management agent, or both.
- 4.5 Resignation. Any officer may resign at any time by giving written notice to the Board of Directors, the President, or the Secretary. Such resignation shall take effect on the day of the receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.
- 4.6 Agreements, Contracts, Deeds, Leases, Checks, Etc. All agreements, contracts, deeds, leases, checks and other instruments of the Association shall be executed by at least two officers or by such other person or persons as may be designated by Board resolution.
- 4.7 Compensation. Compensation of officers shall be subject to the same limitations as compensation of directors under Section 3.9.

ARTICLE V - Committees

- 5.1 General. The Board may appoint such committees as it deems appropriate to perform such tasks and to serve for such periods as the Board may designate by resolution. Each committee shall operate in accordance with the terms of such resolution.
- 5.2 Covenants Committee. In addition to any other committees which the Board may establish pursuant to Section 5.1, the Board may appoint a Covenants Committee consisting of at least three and no more than seven Owners. Acting in accordance with the provisions of the Declaration, these By-Laws, and resolutions the Board may adopt, the Covenants Committee, if established, shall be the hearing tribunal of the Association and shall conduct all hearings held pursuant to Section 3.20.

ARTICLE VI - Miscellaneous

- 6.1 Fiscal Year. The fiscal year of the Association shall be set by Board resolution. In the absence of a resolution, the fiscal year shall be the calendar year.
- 6.2 Parliamentary Rules. Except as may be modified by Board resolution, Robert's Rules of Order (current edition) shall govern the conduct of Association proceedings when not in conflict with North Carolina law, the Articles of Incorporation, or these By-Laws.
- 6.3 Conflicts. If there are conflicts between the provisions of North Carolina law, the Articles of Incorporation, and these By-Laws, the provisions of North Carolina law, the Articles of Incorporation, and the By-Laws (in that order) shall prevail. In the event of a conflict between the Declaration and these By-Laws or the Articles, the Declaration shall control, provided it is not inconsistent with North Carolina law.
- 6.4 Books and Records.
- (a) Inspection by Members and Mortgagees. The Board shall make the following available for inspection and copying by any holder, insurer or guarantor of a first Mortgage on a Unit, any Member, or the duly authorized representative of any of the foregoing at any reasonable place and time, such reasonable place and time to be determined by the Board, and for a purpose reasonably related to his or her interest in the Unit: the Articles of Incorporation and By-Laws, including any amendments, rules of the Association, the Owner register, books of account, and the minutes of meetings of the Members, the Board and committees. The Association shall provide for such inspection to take place at the office of the Association or at such other place within the Property as the Board may designate.
- (b) Rules for Inspection. The Board shall establish reasonable rules with respect to:
- (i) notice to be given to the custodian of the records;
 - (ii) hours and days of the week when such an inspection may be made; and
 - (iii) payment of the cost of reproducing copies of documents requested.

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(c) Inspection by Directors. Every director shall have the absolute right at any reasonable time to inspect all books, records and documents of the Association and the physical properties owned or controlled by the Association. The right of inspection by a director includes the right to make a copy of relevant documents at the expense of the Association.

6.5 Notices. Unless otherwise provided in these By-Laws, all notices, demands, bills, statements, or other communications under these By-Laws shall be in writing and shall be deemed to have been duly given if delivered personally or if sent by United States Mail, first class postage prepaid:

(a) if to a Member, at the address which the Member has designated in writing and filed with the Secretary or, if no such address has been designated, at the address of the registered office of such Member;

(b) if to the Association, the Board, or the managing agent, at the principal office of the Association or the managing agent, if any, or at such other address as shall be designated by notice in writing to the Members pursuant to this Section; and

(c) if to an Owner, at the mailing address of such Owner as designated by such Owner in writing to the Association or, if no address has been designated, at the address of such Owner's Unit.

6.6 Amendment.

(a) By Class B Member. Prior to the conveyance of the first Unit by Declarant to a Person other than a Builder, the Class B Member may unilaterally amend these By-Laws. After such conveyance, the Class B Member may unilaterally amend these By-Laws at any time if such amendment is necessary (a) to bring any provision into compliance with any applicable governmental statutes, rule or regulation, or judicial determination; (b) to enable any reputable title insurance company to issue title insurance coverage on the Units; (c) to enable an institutional or governmental lender or purchaser of mortgage loans, including, for example, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to purchase mortgage loans on the Units; or (d) to enable any governmental agency or reputable private insurance company to guarantee or insure mortgage loans on the Units. So long as the Class B Membership exists, the Class B Member may unilaterally amend these By-Laws for any other purpose, provided the amendment has no material adverse effect upon any right of any Member, provided, however, HUD and VA shall approve any amendments to the by-laws as long as Class B membership exists.

(b) By Members Generally. Except as otherwise specifically provided herein, these By-Laws may be amended only upon resolution of the Board and the written consent of seventy-five percent (75%) of the Members.

(c) No amendment may remove, revoke or modify any right or privilege of Declarant or the Class B Member without the written consent of Declarant or the assignee of such right or privilege.
