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STATE OF NORTH CAROLINA  
COUNTY OF UNION

DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS  
FOR FIELDSTONE

**THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS**  
(this "Declaration") is made as of the 22 day of December, 2006, by **FIELDSTONE AT MONROE, LLC** ("Declarant"), a North Carolina limited liability company with offices in Charlotte, North Carolina.

**BACKGROUND STATEMENT**

Declarant is the owner of a parcel of real property located on the northeast side of Avery Parker Road, in the City of Monroe, Union County, North Carolina (referred to herein as the "Property" or "Parcel I"). The Property is more particularly described on Exhibit A attached hereto. Declarant intends to construct on the Property a residential townhouse development, consisting of up to fifty-four (54) attached single-family townhouse units (the "Units"), together with certain common amenities and facilities (the "Common Elements"). This townhouse development (the "Project") shall be known as Fieldstone.

A subdivision plat of the Property (the "Plat") is recorded in Plat Cabinet I at File No. 664 and 665 in the Union County Public Registry.

Declarant also owns an additional parcel of real estate containing approximately 12.28 acres located on the northwest side of Wesley Hill Trail, in the City of Monroe, North Carolina ("Parcel II"). Parcel II is more particularly described on Exhibit B attached hereto.

Declarant reserves the right, but shall not be required, to add Parcel II to the Project in the manner provided in this Declaration, and to construct on such Parcel an additional phase of the Project consisting of up to thirty-five (35) additional buildings containing a total of up to seventy (70) additional residential townhome units. The maximum number of townhome units that Declarant reserves the right to create on Parcels I and II, including the existing units, is one hundred twenty-four (124).

In creating the Project, Declarant desires to develop a residential community, with the Common Elements to be used for the benefit of the owners of Units within the Project, all in

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Drawn by and mail to: Erin P. Snyder  
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101 North Tryon Street, Suite 1900  
Charlotte, North Carolina 28246

accordance with the terms of the North Carolina Planned Community Act. Declarant desires to provide for the preservation of the values and amenities within the Project and for the maintenance of the Common Elements, and therefore desires to subject the Property to the covenants, restrictions, easements, charges and liens described in this Declaration, all for the benefit of the Property and each owner of any part of the Property.

Declarant has deemed it desirable to create a nonprofit, incorporated association which will be delegated and assigned powers of maintaining and administering the Common Elements, of performing limited exterior and structural maintenance of the Units, of administering and enforcing the covenants and restrictions created in this Declaration, of levying, collecting and disbursing the assessments and charges created in this Declaration, and of taking any steps or performing any acts deemed necessary or appropriate to preserve the values of the Units and to promote the recreation, health, safety and welfare of the owners of the Units within the Project. In order to accomplish the foregoing, Declarant is executing and recording this Declaration.

#### STATEMENT OF DECLARATION

**NOW, THEREFORE,** Declarant hereby declares that all of the Property shall be held, transferred, sold, conveyed, occupied and used subject to the following easements, restrictions, covenants and conditions, which shall run with the Property and be binding on, and inure to the benefit of, all parties having any right, title or interest in the Property or any part thereof, and the heirs, successors and assigns of all of the foregoing parties.

#### ARTICLE I

##### DEFINITIONS

The following words, when used in this Declaration or any supplement or amendment hereto, shall have the following meanings (unless the context shall prohibit):

Section 1.1 “Agency” shall mean and refer to any one of the following entities (or their successors) that holds or insures a Mortgage: the Veterans Administration, the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, the Federal Housing Administration, and the Government National Mortgage Association.

Section 1.2 “Association” shall mean and refer to Fieldstone Townhome Owners Association, Inc., a North Carolina non-profit corporation, and its successors and assigns.

Section 1.3 “Board” shall mean and refer to the Board of Directors of the Association.

Section 1.4 “Bylaws” shall mean the bylaws of the Association, a copy of which is attached hereto as Exhibit C, as they may be amended from time to time.

Section 1.5 “Common Elements” shall mean and refer to all real and personal property owned by the Association, and the easements granted to the Association, for the common use and enjoyment of the Owners. The Common Elements to be owned in fee simple by the Association at the time of the conveyance of the first Lot by Declarant to an Owner are all of the

Property outside of the boundaries of individually platted Lots, as designated on the Plat. The Common Elements include all areas within the Property designated as "Private Road," "Common Area," and "Wesley Hill Trail Private 60' Ingress/Egress Easement" on the Plat.

Section 1.6 "Common Expenses" shall mean and refer to any and all expenditures made by or financial liabilities of the Association, together with any allocations to reserves, pursuant to and in accordance with this Declaration, the Bylaws, and N.C.G.S. §47F-1-103(5).

Section 1.7 "Declarant" shall mean and refer to Fieldstone at Monroe, LLC, a North Carolina limited liability company. Following recordation of an instrument transferring to another person or entity some or all of the Special Declarant Rights, pursuant to Section 3.2 of this Declaration, the term "Declarant" also shall mean and refer to that transferee.

Section 1.8 "Declaration" shall mean and refer to this Declaration of Covenants, Conditions and Restrictions, as it may be amended from time to time.

Section 1.9 "Development Rights" shall mean and refer to the rights reserved by Declarant in Article II of this Declaration to add Parcel II to the Project, and to create additional Units and Common Elements on such Parcel II, in accordance with the terms and conditions set forth in Article II.

Section 1.10 "Lot" shall mean and refer to any numbered plot of land, with the exception of the Common Elements, appearing on any recorded subdivision map of the Property.

Section 1.11 Intentionally deleted.

Section 1.12 Intentionally deleted.

Section 1.13 "Member" shall mean and refer to every individual, corporation, partnership, limited liability company, association, trustee or other legal entity that is a member of the Association.

Section 1.14 "Mortgage" shall mean and refer to a mortgage or deed of trust constituting a first lien on a Unit.

Section 1.15 "Mortgagee" shall mean and refer to an owner or holder of a Mortgage that has notified the Association in writing of its name and address, and that it holds a Mortgage on a Unit. Such notice shall be deemed to include a request that the Mortgage be given the notice and other rights described in Article XIV.

Section 1.16 "North Carolina Planned Community Act" shall mean and refer to Chapter 47F of the North Carolina General Statutes.

Section 1.17 "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of fee simple title to any Lot, but excluding those parties who have an interest in a Lot merely as security for the performance of an obligation.

Section 1.18 Intentionally deleted.

Section 1.19 "Plat" shall mean and refer to the subdivision map of the Property, which is recorded in Plat Cabinet I at File 664 and 665 in the Union County Public Registry.

Section 1.20 "Project" shall mean and refer to the residential townhouse project located on the Property, which initially shall be known as Fieldstone.

Section 1.21 "Project Documents" shall mean and refer to this Declaration, the Articles of Incorporation of the Association, the Bylaws, and the rules and regulations governing the use of the Property, as the foregoing may be amended and supplemented from time to time, and all attachments and exhibits thereto.

Section 1.22 "Property" shall mean and refer to the real property described on Exhibit A attached hereto. If Declarant exercises its Development Rights to add Parcel II to the Project, and to create additional Units and Common Elements on such Parcel II, the Supplementary Declaration required by Section 2.3 of this Declaration shall contain a new legal description of the "Property" that includes Parcel II.

Section 1.23 "Special Declarant Rights" shall mean and refer the rights reserved for the benefit of Declarant in the Project Documents, including but not limited to the right to add Parcel II to the Project, as more particularly described in Article II of this Declaration.

Section 1.24 "Unit" shall mean and refer to an attached or semi-attached residential townhouse constructed upon a Lot.

In addition, the definitions set forth in N.C.G.S. §47F-1-103 are incorporated in this Declaration by reference, and the terms defined therein shall have the meanings set forth therein when used in this Declaration or the Project Documents, unless those terms are expressly defined otherwise in this Declaration or unless it is plainly evident from the context that a different meaning is intended.

## ARTICLE II

### EXPANSION OF PROJECT

Section 2.1 General. Declarant may, but shall not be required to, add Parcel II to the Project. Only Parcel I is being subjected to the operation of this Declaration as of the date of the initial execution and recording of this Declaration. Parcel II and improvements thereon, including Common Elements, may be subjected to the provisions of this Declaration and the other Project Documents in the manner provided in this Article II.

Section 2.2 Additions by Declarant. Declarant reserves an option, until the seventh (7th) anniversary of the date of recording of this Declaration, to subject Parcel II to this Declaration, in accordance with provisions of this Article II. Declarant may exercise this right within the seven (7) year period specified above, without the consent or approval of the Association, or any other Owner or Mortgagee, by executing and recording a Supplementary Declaration in the manner provided in Section 2.3 below. Notwithstanding the foregoing, so

long as Declarant is a Class B Member in the Association, such addition shall require the prior approval of any Agency holding or insuring a Mortgage.

Section 2.3 Supplementary Declaration. In order to exercise the Development Rights to subject Parcel II to this Declaration, Declarant shall execute and record an amendment to this Declaration (the "Supplementary Declaration"). The Supplementary Declaration executed and recorded by Declarant shall contain an amendment to Exhibit A attached to this Declaration, legally describing the Property. The Supplementary Declaration also may contain such additions to the provisions of this Declaration as may be necessary to reflect the different character of the new Units created by Declarant, so long as such additions are not inconsistent with the overall scheme of the Declaration, and provided that such additions shall not apply to any Lot or Unit conveyed by Declarant prior to recordation of the Supplementary Declaration, or to the Owner or Mortgagee of any such Lot or Unit.

Section 2.4 Conveyance of Common Elements. Following the recording of the Supplementary Declaration, Declarant shall convey to the Association the common elements located within the additional property being subjected to this Declaration, as provided in Section 4.2.

Section 2.5 Liens. Prior to recordation of any Supplementary Declaration in accordance with this Article II, Declarant shall (a) satisfy or discharge all liens arising in connection with Declarant's ownership of, and construction of improvements upon, Parcel II that would adversely affect the rights of existing unit owners or the priority of first mortgages on Units in the existing Project, (b) obtain lien waivers from the general contractor responsible for construction of the improvements on Parcel II, (c) obtain a consent and subordination from the beneficiary under any deed of trust encumbering Parcel II subordinating such deed of trust to the terms of the Declaration, and (d) pay any taxes or other assessments relating to Parcel II covering any period prior to its addition.

### ARTICLE III

#### SPECIAL DECLARANT RIGHTS

Section 3.1 Special Declarant Rights. Special Declarant Rights are those rights reserved for the benefit of Declarant in the Project Documents and those rights set forth in N.C.G.S. §47F-1-103(28), and shall include without limitation the following rights:

- (a) The right to complete any improvements shown on the Plat.
- (b) The rights associated with the ownership of Class B Lots.
- (c) The right to maintain sales offices, management offices, signs advertising the Project, and model Units.
- (d) The right to use easements through the Common Elements for the purpose of making improvements within the Project.

(e) The right to add Parcel II to the Project as described in Article II.

Section 3.2 Transfer of Special Declarant Rights. Declarant may transfer any Special Declarant Rights created or reserved under the Project Documents to any person or entity, by an instrument evidencing the transfer duly recorded in the Office of the Register of Deeds for Union County. The instrument shall not be effective unless it is executed by the transferor and the transferee. Upon the transfer of any Special Declarant Rights, the liability of the transferor and the transferee shall be as set forth in N.C.G.S. §47F-3-104.

#### ARTICLE IV

#### COMMON ELEMENTS

Section 4.1 Owners' Easements of Enjoyment. In addition to the specific easements described in Article X, every Owner shall have a perpetual right and easement of enjoyment in and to the Common Elements, which shall be appurtenant to and shall pass with the title to every Lot, subject to the terms of this Section 4.1. The foregoing easement rights include, without limitation, a non-exclusive easement over that portion of the Property shown as "Private Road" and "Wesley Hill Trail Private 60' Ingress/Egress Easement" on the Plat, and a non-exclusive easement over all other streets, driveways, walkways and parking areas within the Common Elements, for the purpose of vehicular and pedestrian access, ingress and egress to each Lot over the Common Elements from Fieldstone Gate Court and Stoney Pointe Circle (as applicable). The parking and access easements described in the preceding sentence shall survive the expiration or earlier termination of this Declaration, and shall continue as a burden running with the Common Elements unless and until such reasonable parking, access, ingress and egress is provided by the dedication of a public street or by the conveyance in fee or by the grant of a perpetual easement in one or more strips of land adequate for that purpose.

All easements over the Common Elements created by this Section 4.1 shall be deemed appurtenant to each Lot, shall inure to the benefit of each Owner and his tenants, family members, guests, invitees and agents, and are granted subject to the following conditions and reservations:

- (a) The right of the Association, in accordance with the provisions of Section 4.5 and the Project Documents, to mortgage, pledge, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred;
- (b) The right of the Association to take such steps as are reasonably necessary to protect the Common Elements against foreclosure;
- (c) The right of the Association, as provided in the Project Documents, to suspend the voting rights of any Member and the enjoyment rights of any Member in the Common Elements, except the right of pedestrian or vehicular access to the Member's Lot and the right of access to utility services for such Lot, for any period during which any assessment remains unpaid, or as a result of any infraction of its published rules and regulations;

(d) The right of the Association, in accordance with the provisions of Section 4.5 and the Project Documents, 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;

(e) The right of Declarant, prior to the conveyance of the Common Elements to the Association, and of the Association, to grant and reserve easements and rights-of-way through, under, over and across the Common Elements, for the installation, maintenance and inspection of utility facilities, as provided in Section 10.3;

(f) The other easements reserved by Declarant over the Common Elements described in Section 10.7;

(g) The right of the Association to limit the number of guests of Members as to the use of any facilities situated upon the Common Elements or any other property of the Association; and

(h) The right of the Association to establish reasonable rules and regulations for the use of any of the facilities situated upon the Common Elements by Members or their tenants, family members, guests, invitees and agents, as provided in Article XI.

**Section 4.2 Title to Common Elements.** Declarant covenants for itself, its successors and assigns, that it shall convey fee simple title to the Common Elements within the Property to the Association prior to or simultaneously with the date of recordation of the first deed conveying the first Lot to an Owner other than Declarant; provided, however, Declarant shall reserve unto itself for the benefit of Parcel II a right of vehicular and pedestrian access, ingress and egress, over all streets, driveways, walkways and parking areas within the area shown on the Plat as "Wesley Hill Trail Private 60' Ingress/Egress Easement." In the event that Parcel II is subjected to this Declaration, as provided in Article II, Declarant shall convey fee simple title to the common elements within such property, as designated on the plat showing such property, to the Association prior to or simultaneously with the date of recordation of the first deed conveying the first Lot in that phase. Each such conveyance shall be free and clear of all liens and encumbrances, except the rights, restrictions, and easements set forth in this Declaration, including the reserved easements referenced in Section 10.7, other public and private access, utility and drainage easements, easements to governmental authorities, and ad valorem taxes for the year in which such conveyance occurs (which taxes shall be prorated as of the date of conveyance and paid when due by the Association).

**Section 4.3 Delegation of Use.** Any Owner may delegate, in accordance with the Project Documents, his rights of enjoyment to the Common Elements to members of his family, tenants or contract purchasers who reside on the Property, or to such other persons as may be permitted by the Association.

**Section 4.4 Maintenance of Common Elements.** The Association shall be responsible for the maintenance and repair of the Common Elements and all improvements located thereon, except for any maintenance or repairs caused by the negligence or intentional misconduct of any Owner, his agents, invitees or family members, which shall be the responsibility of that Owner.

Section 4.5 Conveyance of Common Elements. While the Property remains subject to this Declaration, no conveyances of (including dedications) or security interests or liens of any nature shall arise or be created against the Common Elements without the prior written consent of at least eighty percent (80%) of all Owners, including at least eighty percent (80%) of all Owners other than Declarant, and at least eighty percent (80%) of all Mortgagees. In addition, so long as Declarant is a Class B Member in the Association, any dedication of all or any part of the Common Elements to public use shall require the prior approval of any Agency holding or insuring a Mortgage. Any grant of a mortgage or security interest in the Common Elements shall expressly be subject to the rights and easements created by this Declaration. Every agreement for the performance of labor or the furnishing of materials to the Common Elements, whether oral or in writing, must provide that it is subject to the provisions of this Declaration and that the right to file a mechanic's lien or other similar lien by reason of labor performed or material furnished is subordinated to this Declaration.

## ARTICLE V

### THE ASSOCIATION

Section 5.1 Automatic Membership. All Owners shall automatically be Members of the Association, and shall enjoy the privileges and be bound by the obligations contained in the Project Documents, including the obligation to pay assessments. Ownership of any fee or undivided interest in any Lot shall be the sole qualification for membership in the Association. Membership shall be appurtenant to and may not be separated from the ownership of any Lot. The Board may make reasonable rules regarding proof of ownership.

Section 5.2 Voting Rights. There shall be two classes of Lots and Members with respect to voting rights in the Association:

(a) Class A Lots shall be all Lots in the Project except for Class B Lots, as defined below. The Owner (or group of Owners) of each Class A Lot shall be entitled to one (1) vote in the Association. If fee simple title to a Lot is owned of record by more than one person or entity all such persons or entities shall be Members of the Association, but the vote with respect to any such jointly owned Lot shall be cast as provided in the Bylaws. In no event shall more than one (1) vote in the Association be cast with respect to each Class A Lot.

(b) Class B Lots shall be all Lots in the Project owned by Declarant that have not been converted to Class A Lots. Declarant shall be entitled to four (4) votes in the Association for each Class B Lot owned by it. The Class B Lots shall cease to exist and be converted to Class A Lots upon the earlier to occur of the following: (1) the date that seventy-five percent (75%) of the Lots in the Project are deeded by Declarant to other Owners; provided, however, that if Declarant subsequently annexes additional land to the Project and as a result once again owns more than twenty-five percent (25%) of the Lots in the Project, the Class B Membership shall be reinstated with respect to all Lots owned by Declarant; or (2) the date seven (7) years from the date of recording of this Declaration.



Section 5.3 Directors Appointed by Declarant. The initial Board shall consist of not less than three (3) persons appointed by Declarant. These persons may or may not be employees of Declarant, and need not own or occupy a Lot. Until these persons are replaced by elected Board members at the first annual meeting of Members, they shall constitute the Board of the Association and exercise all powers and duties granted to the Board in the Bylaws. The initial directors are specifically authorized to fix the annual assessments for periods through December 31, 2006, and to enter into a Management Agreement for the Association, subject to the limitations set forth in Section 5.17.

Section 5.4 Creation of the Lien and Personal Obligation of Assessments. Declarant, for each Lot owned within the Property, hereby covenants, and each Owner of any Lot, by acceptance of a deed therefor, is deemed to covenant and agree to pay to the Association: (1) annual assessments or charges of the Association, and (2) special assessments of the Association as provided in Section 5.7, such assessments to be established and collected as hereinafter provided. Each annual and special assessment, together with interest, costs and reasonable attorneys' fees, shall be a continuing lien upon the Lot against which each such assessment is made. Each such assessment, together with interest, costs and reasonable attorneys' fees, shall also be the personal financial obligation of the person who was the Owner of such Lot at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title (other than as a lien on the Lot) unless expressly assumed by them.

Section 5.5 Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the Owners and other residents of the Property and in particular for: the acquisition, improvement, maintenance and operation of the Common Elements; services and facilities devoted to this purpose and related to the use and enjoyment of the Common Elements, including but not limited to maintenance, landscaping and security services; payment of taxes and governmental assessments on the Common Elements; payment of insurance premiums for the insurance policies maintained by the Association in accordance with the Project Document; payment of water and sewer fees for water supplied and sewer services provided to the Common Elements, or to individual Units if such services are not separately metered to each Unit; payment of management fees to a property manager in accordance with Section 5.17; the provision of a reserve fund for replacement; the employment of attorneys and accountants to represent the Association when appropriate; the cost of utilities and fuel used in operating facilities in the Common Elements; the maintenance and upkeep of all private streets and roadways in the Property; and the limited exterior maintenance of Lots and Units, as provided in Article VIII.

Section 5.6 Maximum Annual Assessment. Until December 31, 2006, the maximum annual assessment for each Class A Lot (the "Assessment Cap") shall be One Thousand Five Hundred and No/100 Dollars (\$1,500.00), except as otherwise provided below.

(a) From and after December 31, 2006, the Assessment Cap may be increased by the Board, without a vote of the membership, so long as the amount of the increase does not exceed fifteen percent (15%) per annum, calculated on a cumulative basis.

(b) From and after December 31, 2006, the Assessment Cap may be increased above the increase allowed in Section 5.6(a) by a vote of two-thirds (2/3) of the Members of the Association who are voting in person or by proxy, at a meeting duly called for this purpose.

(c) The Board shall fix the annual assessment for each assessment year at an amount not in excess of the Assessment Cap for that year.

Section 5.7 Special Assessments. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part: (a) the cost of any construction, reconstruction, repair or replacement of capital improvements upon the Common Elements, including but not limited to fixtures and personal property related thereto; (b) the cost of paying special governmental assessments; or (c) any other cost or expense, payment of which through special assessment is approved by two-thirds (2/3) of the votes of the Members of the Association who are voting in person or by proxy at a meeting duly called for this purpose. There shall be no limit on the amount of any such special assessments.

Section 5.8 Uniform Rate of Assessment. Both annual and special assessments levied by the Association must be fixed at a uniform rate for each Lot, but such rates may be based on the occupiable or heated area within each Unit (in the case of utility charges), the replacement value or assessed value of each Unit (in the case of insurance premiums), or some other reasonable criteria. Notwithstanding the foregoing, the rate of assessment for any unoccupied Class B Lot owned by Declarant shall be twenty-five percent (25%) of the rate for Class A Lots. With respect to Lots owned by it, Declarant's obligations to pay assessments for Common Expenses may be satisfied in the form of cash payments to the Association or "in kind" contributions of services that would otherwise be include within Common Expenses, or a combination of these.

Section 5.9 Date of Commencement of Annual Assessments: Due Dates. The annual assessments levied by the Association shall commence as to each Lot upon substantial completion of the Unit constructed thereon, as evidenced by the issuance of a certificate of occupancy (or equivalent) for that Unit. The first annual assessment shall be adjusted according to the number of months remaining in the fiscal year of the Association. The Board shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board and, unless otherwise determined by the Board, annual assessments shall be collected monthly with 1/12 of the annual assessment due and payable on the first day of each calendar month.

Section 5.10 Effect of Nonpayment of Assessments: Remedies of the Association. If any annual or special assessment, or monthly installment thereof, is not paid within thirty (30) days after its due date, the Board may, at its option, declare the entire unpaid assessment, both annual and special, immediately due and payable, and such unpaid assessment shall bear interest from and after the due date at the rate of eighteen percent (18%) per annum, not to exceed, however, the maximum rate permitted by law. In addition, interest, reasonable attorneys' fees, and costs of such action or foreclosure shall be added to the amount of such assessment. Any

sum assessed by the Association remaining unpaid for a period of thirty (30) days or longer shall constitute a lien on the Unit with respect to which such sum was assessed upon filing in accordance with N.C.G.S. §47F-3-116, and shall be enforceable by the Association in accordance with N.C.G.S. §47F-3-116 and Section 8 of the Bylaws. NO OWNER MAY WAIVE OR OTHERWISE ESCAPE LIABILITY FOR THE ASSESSMENTS PROVIDED FOR HEREIN BY NON-USE OF THE COMMON ELEMENTS OR ABANDONMENT OF HIS LOT.

During any period in which an Owner is in default in the payment of any installment of an annual, special or other assessment levied by the Association, the voting rights of the Owner in the Association and the right to the use of the Common Elements or any other services or facilities which is provided by the Association (except the right of access to the Owner's Lot and the right of access to utility service for such Lot) may be suspended by the Association until such assessment is paid. In the event of violation by an Owner of any rules or regulations duly established by the Association, such Owner's voting and use rights may be suspended by the Board in accordance with the procedures specified in N.C.G.S. §47F-3-107A and the Bylaws.

Section 5.11 Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any Mortgage on any Lot, and shall be subordinate to any tax lien or special assessment on a Lot made by lawful governmental authority. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot by foreclosure of any Mortgage, or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. Such unpaid assessments shall be deemed to be expenses of the Association assessable against and collectible from all Owners, including the Owner of the Lot acquired as a result of foreclosure of the Mortgage, his heirs, successors and assigns. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

Section 5.12 Exempt Property. The following parts of the Property shall be exempt from assessment liens of the Association: (a) the Common Elements; and (b) any part of the Property dedicated to and accepted by a local public authority (the recording of this Declaration shall in no way be deemed a dedication of, or offer to dedicate, any part of the Property to any public authority).

Section 5.13 No Obligation to Provide Funds. Declarant shall have absolutely no obligation to make payments to or for the Association for any purpose except for its obligation to make periodic payment of assessments levied on Lots which Declarant may from time to time own. Declarant may, at its discretion, lend funds to the Association from time to time as required, which loans shall be repayable with interest at a rate no higher than the prime rate of interest listed in the "Money Rates" table of The Wall Street Journal, and with a maturity date no more than one (1) year from the date of advancement of funds.

Section 5.14 Reserve Funds. From and after the recording of this Declaration, the Association may establish and maintain a reserve fund or funds for replacement and maintenance of the improvements located on the Common Elements or the Property. In that event, the Association shall allocate revenues from assessments to such reserve fund or funds in such amounts and in such manner as may be established from time to time by the Board. The reserve

fund or funds shall be segregated from operating funds of the Association and may be in the form of a cash deposit, or invested in certificates of deposit or similar obligations issued by a bank or savings and loan association or the obligations of, or fully guaranteed as to principal by, the United States of America. The reserve fund or funds shall be used for the purpose of repairing, replacing and maintaining any facilities owned by the Association, and for such other purposes as may be determined by the Board.

Section 5.15 Association to Maintain Books and Records. The Association shall maintain at all times current copies of all Project Documents, all rules and regulations concerning the Property, as well as its own books, records and financial statements, and same shall be available for inspection by Owners or Mortgagees during normal business hours upon at least three (3) business days' prior written notice to the Association.

Section 5.16 Voluntary Conveyance; Estoppel. Except as provided in Section 5.11, the lien for assessments of the Association created in this Article V shall not be affected by any conveyance of a Lot, and shall remain a continuing charge on that Lot and a continuing lien which may be foreclosed as provided in Section 5.10. Any grantee in a voluntary conveyance shall be entitled to a statement from the Board, setting forth the amount of the unpaid assessments against the grantor due the Association and such grantee shall not be liable for, nor shall the Lot conveyed be subject to a lien for, any unpaid assessments made by the Association against the grantor in excess of the amount set forth in that statement.

Section 5.17 Management and Other Agreements. The Association shall have the right to enter into management and other agreements for the Property with any individual, firm or entity that the Association deems appropriate and in the best interest of the Project. A copy of all such agreements shall be made available to each Owner and Mortgagee upon request. Any management and other agreements entered into by the Association shall provide that such agreements may be cancelled, with or without cause, upon no more than ninety (90) days' notice and without penalty at any time. The property manager shall at all times be answerable to the Association and subject to its direction.

Section 5.18 Failure of Association to Pay Taxes and Special Assessments on Common Elements. If the Association, contrary to its obligation to do so, fails to pay the ad valorem taxes or any special governmental assessments on the Common Elements on or before the date one hundred eighty (180) days after such taxes or assessments become delinquent, then such taxes or assessments, together with any interest and penalties thereon, shall be and become a lien, on a pro rata basis, upon all Lots. Such liens may be foreclosed by the governmental authority in the same manner as provided for foreclosure of liens for ad valorem taxes and assessments for public improvements.

## ARTICLE VI

### PARTY WALLS

Section 6.1 General Rules of Law to Apply. To the extent not inconsistent with the provisions of this Article VI, the general rules of law regarding party walls and liability for property damage resulting from negligence or willful acts or omissions shall apply to each party

wall or party fence which is built as part of the original construction upon each Lot and any replacement thereof. If any portion of the original structures constructed on each Lot, including any party wall, any extension of a party wall, or any common fence, protrudes over an adjoining Lot, or into the Common Elements, such structure, wall or fence shall be deemed to be a permitted encroachment upon the adjoining Lot or Common Elements, and the Owners and the Association shall neither maintain any action for the removal of the encroaching structure, wall or fence, nor any action for damages. If there is a protrusion as described in the immediately preceding sentence, it shall be deemed that the affected Owners or the Association have granted perpetual easements to the adjoining Owner or Owners for continuing maintenance and use of the encroaching structure, wall or fence. The foregoing provision also shall apply to any replacements in conformance with the original structure, wall or fence constructed by Declarant. The provisions of this Section 6.1 shall be perpetual in duration and shall not be affected by an amendment of this Declaration.

Section 6.2 Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who own such party wall in proportion to their ownership, to the extent such maintenance is not the responsibility of the Association under Article VIII.

Section 6.3 Destruction by Fire or Other Casualty. If a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it, and if the other Owner thereafter makes use of the wall, he shall contribute to the cost of restoration thereof in proportion to such use, without prejudice, however, to the right of any such Owner to call for a larger contribution from the other under any rule of law regarding liability for negligent or willful acts or omissions.

Section 6.4 Weatherproofing. Notwithstanding any other provision of this article, an Owner who by his negligent or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

Section 6.5 Right to Contribution Runs With Land. The right of any Owner to contribution from any other Owner under this article shall be appurtenant to the land and shall pass to such Owner's successors in title.

Section 6.6 Easement and Right of Entry for Repair, Maintenance, and Reconstruction. Every Owner shall have an easement and right of entry upon the Lot of any other Owner to the extent reasonably necessary to perform repair, maintenance, or reconstruction of a party wall. Such repair, maintenance, or reconstruction shall be done expeditiously, and, upon completion of the work, the Owner shall restore the adjoining Lot or Lots to as near the same condition as that which prevailed prior to commencement of the work as is reasonably practicable.

Section 6.7 Certification With Respect to Contribution. If any Owner desires to sell his Lot, he may, in order to assure a prospective purchaser that no adjoining Owner has a right of contribution as provided in this article request of the adjoining Owner or Owners a certification that no right of contribution exists, whereupon it shall be the duty of each adjoining Owner to make such certification immediately upon request and without charge. If the adjoining Owner

claims the right of contribution, the certification shall contain a recital of the amount claimed and the basis therefor.

Section 6.8 Arbitration. In the event of any dispute arising concerning a party wall, or under the provisions of this Article VI, each party shall choose one arbitrator, and such arbitrators shall choose one additional arbitrator, and the decision of a majority of all such arbitrators shall be binding upon the Owners, who expressly agree to submit to and be bound by such arbitration procedure and decision. Should any party refuse to appoint an arbitrator within ten (10) days after written request therefor, the Board shall select an arbitrator for the refusing party. All arbitrators chosen shall be either architects, engineers, general contractors or attorneys licensed as such in North Carolina.

## ARTICLE VII

### INSURANCE AND RECONSTRUCTION

Section 7.1 Association Insurance. The Association shall procure and maintain, or cause to be maintained, insurance in accordance with the following provisions:

(a) Property Insurance. The Association shall obtain and maintain at all times a policy or policies of property insurance (ISO special form or its equivalent) covering all buildings and improvements located on the Property, including all Units and all improvements located in the Common Elements, in an amount not less than one hundred percent (100%) of the replacement cost of such improvements, in accordance with the plans and specifications for the original development of the Property, at the time such insurance is purchased and at the time of each renewal thereof, exclusive of the costs of excavation, paving, foundations and footings, with a commercially reasonable deductible not in excess of \$10,000.00. Each policy shall show the Association as the named insured, but shall provide that each Owner is an insured person with respect to his Unit, and that the Association is an insured person with respect to the Common Elements; shall contain clauses providing for waiver of subrogation against any Owner, and any Owner's employees or agents; shall provide that it may not be canceled or substantially modified without at least thirty (30) days' prior written notice to the Association and all insureds, including all Owners and all Mortgagees; shall provide that no act or omission by any Owner will preclude recovery upon such policy; and shall provide that if, at the time of a loss under the policy, there is other insurance in the name of an Owner covering the same risk covered by the policy, the Association's policy provides primary insurance. Each policy shall contain an inflation guard endorsement and a construction code endorsement, if available. Each policy shall provide that adjustment of loss shall be made by the Association as insurance trustee, and shall provide for the issuance of certificates or mortgagee endorsements to all Mortgagees.

(b) Liability Insurance. The Association shall obtain and maintain a policy of commercial general liability insurance in such limits as the Association may, from time to time, determine, covering each member of the Board, the property manager, if any, and each Owner with respect to liability arising out of the use, ownership, maintenance, or

repair of the Common Elements; provided, however, that in no event shall the limits of such policy ever be less than \$1,000,000.00 per occurrence. The liability insurance policy shall include endorsements covering cross liability claims of one insured against another, including the liability of the Owners as a group to a single Owner, and shall provide that it may not be cancelled or substantially modified without at least thirty (30) days' prior written notice to the Association and to all insureds, including all Owners and all Mortgagees. The Association shall review such limits annually.

(c) Fidelity Insurance. The Association shall procure and maintain, or cause to be maintained, a policy or policies of insurance coverage to protect against dishonest acts on the part of officers, directors, volunteers, managers and employees of the Association and any other persons who handle or are responsible for the handling of funds of the Association. Any such fidelity insurance policy must name the Association as the named insured and shall be written in an amount as may be determined by the Association, but in no event less than one-half the annual budgeted amount of annual assessments, or the amount required by any Mortgagee, whichever is greater.

(d) Other Insurance. The Board, or its duly authorized agent, shall have the authority to and shall obtain and maintain in effect such other insurance coverages as may be required by any Agency (as same may be amended or modified from time to time), and such other insurance coverages as the Board shall determine from time to time to be desirable, specifically including, without limitation, directors and officers liability insurance, performance bonds, payment on labor and material bonds and maintenance bonds. In addition, the Association shall maintain flood insurance on any Unit located within a "special flood hazard area," as designated on a Flood Insurance Rate Map published by the Federal Emergency Management Association, or if otherwise required by any Agency.

Section 7.2 Premiums. Premiums upon insurance policies purchased by the Association, and any amounts paid as a result of a deductible, shall be paid by the Association and charged as a expense of the Association for all purposes. All such premiums shall be paid by the Association at least thirty (30) days prior to the expiration date of such policies.

Section 7.3 General Standards. All insurance policies maintained by the Association under this Article VII shall comply with the terms of N.C.G.S. §47F-3-113, and shall be written with a company or companies licensed to do business in the State of North Carolina and holding a rating of A or better in *Best's Insurance Guide*, provided that such insurance is available from a company with at least such a rating and that, in the event not so available, such insurance is obtained from a company with the highest rating available in *Best's Insurance Guide*. Upon request, duplicate originals of all such policies shall be furnished to all Owners and Mortgagees, provided that in lieu of such duplicate original policies the Association may deliver certificates to the Owners and the Mortgagees attesting the fact that such policies and such insurance are in force and effect. The Association also shall furnish to all Owners and Mortgagees evidence that premiums for the required insurance have been paid on an annual basis.

Section 7.4 Owners' Insurance. Each Owner shall obtain and keep continuously in force additional fire and casualty and extended coverage insurance upon his personal property

and any alterations or other improvements made to his Unit, public liability insurance, and such other insurance coverage as he may desire. Each Owner shall obtain and maintain liability insurance coverage in the amount of at least \$100,000.00 per occurrence. Each Owner shall file a copy of each such individual policy with the Association within thirty (30) days after purchase.

Section 7.5 Distribution of Insurance Proceeds. All policies of property insurance procured by the Association shall provide that all losses shall be adjusted with, and all proceeds shall be payable to, the Association as insurance trustee. The Association shall have exclusive authority to negotiate any and all losses under such insurance policies, and the Association is hereby irrevocably appointed as agent and attorney-in-fact for each Owner to adjust all claims arising under such policies and to execute and deliver releases upon the payment of claims. The sole duty of the Association as insurance trustee shall be to receive such proceeds as are paid and to hold the same in trust for the purposes set forth herein and for the benefit of the Owners and their Mortgagees in the following shares:

- (a) Proceeds on account of damage to any improvements in the Common Elements shall be held by the Association and applied in the manner provided in Section 7.6.
- (b) Proceeds on account of damage to Units shall be held in undivided shares for the Owners of damaged Units in proportion to the cost of repairing the damage to each such Owner's Unit, which cost shall be determined by the Association.
- (c) In the event a mortgagee endorsement or certificate has been issued with respect to a Unit, the share of that Owner shall be held in trust for the Owner and its Mortgagee, as their respective interests may appear.
- (d) Proceeds of insurance policies received by the Association as insurance trustee shall be distributed to or for the benefit of the Owners in the manner provided in Section 7.6.

Section 7.6 Responsibility for Reconstruction or Repair. If any portion of the Property is damaged by perils covered by the property insurance maintained by the Association in accordance with Section 7.1(a), the Association shall cause such damaged portion to be promptly reconstructed or repaired with the proceeds of insurance available for that purpose, if any, and any such reconstruction or repair shall be substantially in accordance with the plans and specifications for the original development of the Property, except as provided to the contrary in N.C.G.S. §47F-3-113(g). In addition, if such damage renders one or more of the then-existing Units on the Property uninhabitable, the Association may, with the affirmative vote of eighty percent (80%) of the votes of the Members and the written approval of the holders of eighty percent (80%) of the Mortgages then in force with respect to the Lots, and with the approval of one hundred percent (100%) of the Owners and Mortgagees of the damaged Units proposed not to be rebuilt, elect not to reconstruct or repair such damaged Units. A meeting shall be called within ninety (90) days after the occurrence of such casualty, or, if by such date the property insurance loss has not been finally adjusted, then within thirty (30) days after such final adjustment. Upon any such election, the insurance proceeds attributable to such damage shall be promptly distributed to the Owners whose Units were damaged, or to their Mortgagees in



accordance with the terms of the Mortgage covering that Lot, in proportion to the reasonable cost of repairing damage to such Units; provided, however, that no Owner shall receive any portion of his share of such proceeds until all liens and encumbrances on his Lot have been paid, released or discharged and any debris resulting from such damage or destruction has been removed from the Property.

If: (a) the proceeds of insurance are not sufficient to repair damage or destruction of any part of the Property by fire or other casualty, or (b) the damage or destruction is caused by any casualty not insured against, or (c) insurance proceeds are not available for repair or reconstruction by reason of the application of deductible clauses of applicable policies, then the repair or reconstruction of any damaged improvements within the Common Elements shall be accomplished promptly by the Association and the extent of such repairs shall be an expense of the Association; and the repair or reconstruction of any improvements contained within any Lot shall be accomplished promptly by the Owner of the affected Lot at his expense. If the Owner of the affected Lot fails to promptly accomplish such repair or reconstruction, the Association may perform such repairs or reconstruction on his behalf. The expense of such performance may be assessed against that Lot, and if not paid shall be a lien on the Lot having all of the priorities provided for in this Declaration.

Section 7.7 Procedure for Reconstruction or Repair. In the event of a casualty causing damage to any portion of the Property, the following provisions shall govern and apply:

(a) Immediately after a casualty which causes damage to any portion of the Property, the Association shall obtain, or cause the affected Owners to obtain, reliable and detailed estimates of the cost to place the damaged property in condition as good as that before the casualty. Such costs may include professional fees and premiums for such bonds as the Board deems necessary.

(b) If the proceeds of the casualty insurance are not sufficient to defray the estimated costs of reconstruction and repair by the Association (including the professional fees and premiums, if any), one or more special assessments shall be made against all Owners of the affected Lots (with respect to any deficiency in insurance proceeds for damage or destruction to Units or other improvements on Lots) or all Owners (with respect to any deficiency in insurance proceeds for damage or destruction to the Common Elements or the improvements thereon) in sufficient amounts to provide funds for the payment of such costs, and the proceeds of such special assessments shall be deposited with the Association; provided, however, that the Association may borrow funds to pay for such costs with the assent of eighty percent (80%) of the members of the Association voting at a meeting duly called for such purpose.

(c) The proceeds of the property insurance referred to in Section 7.1(a) and the sums deposited with the Association from collections of special assessments proceeds of authorized loans, as provided in Section 7.7(b), shall constitute a construction fund which shall be held by the Association and applied to the payment of the cost of reconstruction and repair of the Property from time to time as the work progresses, but not more frequently than once in any calendar month. The Association shall make such payments upon a certificate dated not more than fifteen (15) days prior to such request,

signed by an architect in charge of the work who shall be selected by the Association, certifying that the sum then requested is justly due to contractors, subcontractors, materialmen, architects, or other persons who have rendered services or furnished materials in connection with the work, giving a brief description of the services and materials, and certifying that the sum requested does not exceed the value of the services and materials described in the certificate. It shall be presumed that the first monies disbursed in payment of such costs of reconstruction and repair shall be from insurance proceeds; and if there is a balance in any construction fund after payment of all costs of the reconstruction and repair for which the fund is established, such balance shall be disbursed to the Association which may use such excess funds for any purpose not in violation of this Declaration in the sole discretion of the Board.

## ARTICLE VIII

### MAINTENANCE OF PROPERTY

Section 8.1 Maintenance by Association. The Association shall be responsible for the operation, maintenance and repair of the Common Elements, as provided in Section 4.4, and for repairing damage or destruction to the Units or the Common Elements caused by fire or other casualty, as provided in Sections 7.6 and 7.7 of this Declaration. In addition, the Association shall be responsible for the following items of exterior maintenance: lawn care in the front yard area of each Lot, maintenance and repair of all walkways and paved areas, periodic repainting of exterior building surfaces on each Unit, and repair and replacement (if necessary) of the following structural elements of each Unit: exterior walls and building surfaces, roofs, front stoops, gutters, and downspouts. Notwithstanding the foregoing, the Association shall not be responsible for any maintenance or repairs caused by the negligence or intentional misconduct of any Owner, his agents, invitees or family members, which shall be the responsibility of that Owner.

Section 8.2 Maintenance by Owners. Except for the maintenance required of the Association under Section 8.1, each Owner will be responsible for all other required maintenance of the exterior and interior of his or her Unit. Further, each Owner of a Lot shall keep the Lot owned by him, and all improvements thereon, in a clean and sanitary condition and in good order and repair. All fixtures and equipment installed within a Lot, commencing at a point where the utility lines, pipes, wires, conduits or systems enter the exterior walls of the Unit, shall be maintained and kept in repair by the Owner thereof. If an Owner of any Lot fails to maintain that Lot and the improvements thereon in accordance with this Article VIII in a manner reasonably satisfactory to the Board, in its sole discretion, the Board shall give written notice to such Owner and, if the necessary maintenance is not completed within twenty (20) days, the Association shall have the right, through its agents, contractors, and employees, to enter upon the Lot of the defaulting Owner and to repair, maintain and restore the Lot and the exterior of the building and any other improvements erected thereon in a reasonable and good and workmanlike manner. The cost of such repair, maintenance or restoration shall immediately be deemed a special assessment levied by the Association against such Owner and such Owner's Lot, shall become the personal obligation of such Owner and shall become a lien against such Lot enforceable in accordance with Section 5.10. In the event of an emergency (as so deemed by the Board in its

reasonable discretion), the Association shall have the right, with or without prior notice to the Owner, to enter any Lot and Unit to make emergency repairs necessary for the proper maintenance and operation of the Project.

## ARTICLE IX

### ARCHITECTURAL CONTROL

Section 9.1 Building Restrictions. No building or structure other than one (1) single-family Unit shall be constructed on any Lot. No structures of a temporary character, such as a trailer, tent, shack, barn, shed or other outbuilding shall be constructed or used on any portion of the Property at any time. No heat pump, propane tank, solar device, hot tub pump or other similarly exposed mechanical equipment other than those originally installed by Declarant shall be placed on any Lot. No window air conditioning unit shall be installed in any Unit.

No building, fence, wall or other structure shall be constructed, erected or maintained on, or removed from, the Property until plans and specifications for such work have been approved by the Board as provided below. The plans and specifications shall be prepared and signed by a licensed architect or engineer, and shall show the nature, kind, shape, height, materials and location of the proposed improvements or alterations. The Board shall review and approve the plans as to harmony of external design, color and location in relation to surrounding structures and topography. The Association shall have the right to charge a reasonable fee, not to exceed \$100.00, for reviewing each such application. If the Board or its designated committee fails to approve, approve as noted or as qualified, or disapprove such plans and specifications submitted to it in accordance herewith within sixty (60) days, the approval required in this Section 9.1 shall be deemed granted and no further approvals or consent shall be required before the commencement of construction on such improvements; provided, however, that the plans and specifications required to be submitted shall not be deemed to have been received if they contain erroneous data, misstatements, or in any way fail to present accurate information upon which Board or its designated committees can base a decision.

Section 9.2 Alterations. No Owner shall make structural alterations or exterior modifications to the improvements on his Lot or to any of the Common Elements, including but not limited to a change in exterior paint colors, the erection of awnings, the installation of storm doors, storm windows, or window screens (except those originally installed by Declarant), or the decoration of porches or balconies facing the street, without the written approval of the Board. The Board shall not approve any alterations, decorations or modifications which, as determined by the Board in its reasonable judgment, would jeopardize or impair the soundness, safety or appearance of the Property. Further, without the prior written approval of the Board, no Owner shall install or use any window treatment (blinds, draperies or the like) visible from the exterior of his Unit unless the portion thereof visible from the exterior is white, off-white or such other neutral colors as may from time to time be approved by the Board.

Section 9.3 Antennas and Satellite Dishes. No exterior satellite dish in excess of one (1) meter in diameter may be placed on the exterior of any Unit or in the Common Elements without the prior written approval of the Board. The location of any exterior television antennas

and satellite dishes less than one (1) meter in diameter shall be subject to the reasonable prior approval of the Board, taking into account the appropriate standards set forth in the regulations of the Federal Communications Commission, and to the extent reasonably practical, the Board may require that such antennas or dishes be screened from public view. Prior to installing the antenna or satellite dish, the Owner shall furnish to the Board a copy of his installation plans. The Association shall have the right to perform any portion of the installation work at the expense of the Owner, or to require that any portion of the work be performed by contractors designated by the Board. In particular, any roof penetration that is required to install any antenna or satellite dish shall be performed only by the roofing contractor designated by the Board. The Owner shall also be responsible for any damage caused by the removal of the antenna or satellite dish, including the sealing of conduits or other roof penetrations. Again, the Association shall have the right to require that any part of the removal work, including the sealing of roof penetrations, be performed by the roofing contractor designated by the Board, at the Owner's expense. Any Owner installing an antenna or satellite dish under this Section 9.3 shall indemnify, defend and hold the Association harmless from and against any loss, damage, claim or other liability resulting from the installation, maintenance, repair, use and/or removal of the antenna or satellite dish, including any damage to the roof of the building or other property damage caused by roof leaks.

Section 9.4 Inspection. The Board or its designated committee shall have the right, at its election, to enter upon any Lot during construction, erection, or installation of improvements or alterations to inspect the work being undertaken in order to determine that such work is being performed in conformity with the approved plans and specifications and in a good and workmanlike manner, utilizing approved methods and good quality materials.

Section 9.5 Excavation. No Owner of a Lot shall excavate or extract earth from any Lot for any reason other than repair or maintenance reasons. No elevation changes in any Lot shall be allowed which materially affect the surface grade of surrounding Lots or diminish the lateral support of any adjoining or surrounding Lot.

## ARTICLE X

### EASEMENTS

Section 10.1 Construction, Settling and Overhangs. Each Lot and the Common Elements shall be and is subject to an easement for encroachments created by construction, settling and overhangs, as originally designed or constructed, so long as such encroachments exist. Every portion of a Lot and each Unit constructed thereon and contributing to the support of an abutting Unit shall be burdened with an easement of support for the benefit of such abutting Unit. If adjoining Units are partially or totally destroyed, and then rebuilt, the Owners of the Lots so affected agree that minor encroachments from the adjacent Lots or Common Elements resulting from construction shall be permitted and that a valid easement for such encroachments shall exist.

Section 10.2 Access by the Association. The Association, or any person authorized by it, shall have the right of access to each Unit to the extent necessary for performance by the

Association of its obligations of maintenance, repair, or replacement of such Unit or the Common Elements.

Section 10.3 Blanket Easements for Utilities. Declarant, prior to the conveyance of the Common Elements to the Association, and the Association, at any time thereafter, may grant easements for utility purposes for the benefit of the Property, including the right to install, lay, maintain, repair and replace water lines; pipes; ducts; sewer lines; and water lines; gas mains; telephone and television or cable television wires, cables and equipment; electrical conduits; and wires over, under, along and on any portion of the Common Elements. Further, the Association may grant such permits, licenses and easements over the Common Elements for utilities, roads and other purposes reasonably necessary or useful in the discretion of the Board for the purpose of maintenance and operation of the Project. Notwithstanding the foregoing, no sewer lines, electrical lines, water lines or other utilities may be installed or relocated on the Property except as initially approved by Declarant or thereafter approved by Declarant or the Board.

Section 10.4 Underground Electrical Services. Underground single phase electrical service shall be available to all Lots and, where appropriate, to improvements to be constructed on the Common Elements. Metering equipment shall be located on the exterior surface of the walls of any improvement at a point to be designated by the providing utility company. The providing utility company shall have a ten (10) foot easement along and centered on the underground electric power service conductors installed from the utility company's easement to the designated point of service of the Lots. Easements for underground service may be crossed by driveways, walkways, patios and parking areas, provided Declarant makes prior arrangements with the utility company furnishing electric service. Such easements for underground services shall be kept clear of all other improvements, including buildings, or other pavings, other than crossing driveways, walkways, patios, or parking areas.

Section 10.5 Easement for Construction Purposes. Declarant shall have full rights of ingress and egress to and through, over and about the Property during such period of time as Declarant is engaged in any construction or improvement work on or within the Property. Declarant further shall have an easement for the purpose of the storage of materials, vehicles, tools, and equipment which are being utilized in such construction. No Owner, or his guests or invitees, shall in any way interfere with or hamper Declarant, its employees, successors or assigns in connection with such construction.

Section 10.6 Emergency Access. In case of any emergency originating in or threatening any Unit, regardless of whether the Owner is present at the time of such emergency, the Association, or any other person authorized by it, shall have the right to enter any Unit for the purpose of remedying or abating the cause of such emergency and making any other necessary repairs not performed by the Owners, and such right of entry shall be immediate. In addition, all police, fire protection, ambulance and all similar persons shall have the right to enter upon the streets, driveways and other parts of the Common Elements in the performance of their duties.

Section 10.7 Reserved Easements for Declarant. Each deed from Declarant to the Association conveying all or any part of the Common Elements shall be subject to a non-exclusive reserved easement, in favor of Declarant for the purpose of pedestrian and vehicular access to and from Wesley Hill Trail, Fieldstone Gate Court and Stoney Pointe Circle (as

applicable), for the use of the utility facilities (such as sewer and water mains and metering facilities) installed by Declarant in connection with its initial development of the Property, and for the installation, operation, repair and replacement of additional utility facilities. All such non-exclusive access and utility easements reserved by Declarant shall be subject to the terms and conditions set forth in Section 4.1.

## ARTICLE XI

### USE RESTRICTIONS

Section 11.1 Residential Use Only. Each Owner shall use his Unit for residential purposes only, and shall not permit his Unit to be used in any unlawful manner. However, to the extent permitted by law, any Owner may use his Unit as a home office, provided that such home office use (a) is ancillary to the residential use, (b) is not apparent from outside the Unit, (c) does not generate any additional pedestrian or vehicular traffic to or from his Unit or the Common Elements, (d) does not cause any disturbance of other residents or occupants of the Property, and (e) conforms to zoning requirements. In addition, Declarant shall have the right to use any portion of the Property (other than Lots sold to third parties) as a sales office, construction office, storage area, model unit, or similar facility in connection with its development of the Property.

Section 11.2 Care and Maintenance. Each Owner shall (a) keep the interior of his Unit including, but not limited to, all appliances and utility systems, and the exterior of the Lot in a safe, neat and clean condition at all times; (b) permit no unsafe or unsanitary conditions in his Unit or on his Lot; (c) comply with any and all obligations imposed upon owners by applicable building and housing codes; and (d) not deliberately or negligently destroy, deface, damage or remove any part of any Unit or the Common Elements, or knowingly permit any person to do so. If an Owner fails to comply with the standards or requirements of the Association relative to maintenance after written notice to do so, the Association shall have the right to undertake the necessary maintenance or repairs at the expense of the defaulting Owner, as provided in Section 8.2.

Section 11.3 Offensive Activity. No noxious or offensive trade or activity shall be conducted upon any Lot, or in the Common Elements, nor shall anything be done thereon which may be or may become an annoyance or nuisance to any other Owner, or which may endanger the health or safety of any other Owner of the Property.

Section 11.4 Noise and Disorderly Conduct. No Owner shall engage in any disorderly conduct on the Property, or cause or allow any disturbance, including, but not limited to, shouting, singing, or playing any musical instruments, radio, stereo, or television, in a manner that unreasonably disturbs any other Owner of the Property.

Section 11.5 Fire Hazards. No Owner shall make any alterations to his Unit or bring or keep anything therein which will increase the risk of fire, conflict with fire laws or the regulations of the Charlotte Fire Department, or increase the premiums of any insurance policy on the buildings on the Property maintained by the Association.

Section 11.6 Rubbish. All trash, garbage and other waste shall be kept in sanitary containers within each Unit, and the Owner of each Lot shall be responsible for placing such garbage in a roll-out container, and rolling the container out to the designated trash pick-up area on a regular basis. All trash containers or other equipment for storage or disposal of such waste shall be kept in a clean and sanitary condition and shall be located in appropriate areas concealed from public view, except on garbage collection days. In addition, dumping of grass clippings, leaves or other debris, petroleum products, fertilizers, or other potentially hazardous or toxic substances anywhere on the Project is prohibited.

Section 11.7 Utilities. Total electrical usage in any Unit shall not exceed the capacity of the circuits for that Unit as labeled on the circuit breaker boxes, and no electrical device causing overloading of the standard circuits may be used in any Unit without permission of the Association. All clothes dryers will have lint filters, and all stove hoods will have grease screens, and such screens and filters shall be used at all times and kept clean, and in good order and repair, by the owner of the Unit in which they are located.

Section 11.8 Animals. No livestock, poultry or other animals shall be kept or maintained in any Residence or on any Lot, except for common household pets, such as cats and dogs. No pets may be kept or bred for any commercial purposes, and no savage or dangerous pets may be kept on the Property. All pets shall be controlled so as not to create a nuisance or unreasonable disturbance (including loud and excessive barking) on the Property. All pets must be housed inside a Unit, and no pet shall be permitted upon the Common Elements unless carried or leashed by a person that can control the pet. Pets shall not be permitted to defecate in the Common Elements, or urinate on the shrubbery, and each Owner shall clean up immediately after his pet if an accident occurs. All pets shall be registered or inoculated as required by law. Each owner shall hold the Association harmless from any claim resulting from any action of his pet, and shall repair at his expense any damage to the Common Elements caused by his pet. If any owner violates these rules more than twice in any twelve (12) month period, then in addition to any fines provided in the Bylaws, the Association shall have the right to require the owner to remove the pet permanently from the Property upon not less than ten (10) days' written notice.

Section 11.9 Decks and Patios. The rear decks and exterior patios adjacent to each Unit shall be kept in a clean, neat, and orderly condition at all times, and shall not be used for the overnight storage of garbage, or for the drying of laundry. In particular, any dead plants shall be removed promptly. No indoor-outdoor carpeting, hot tub, or other pool shall be installed on any deck. Any furniture on the deck shall be appropriate outdoor furniture and shall be maintained in a neat, tidy, and good condition. All other personal property (such as bicycles, lawn care equipment and recreational equipment) shall be stored in a manner so as not to be visible from the Common Elements or other Lots. If permitted by applicable building codes and zoning ordinances, an Owner may use or store a cooking grill on the rear deck, but such Owner shall be responsible for complying with all applicable laws, ordinances, and regulations in connection with such storage and use.

Section 11.10 Signs. No signs or other advertising devices shall be displayed on or about the exterior of any Unit, or in the Common Elements. The provisions of this Section 11.10 shall not prevent the placement of permanent signs identifying the Project at the entrance to the Project from Fieldstone Gate Court and Stoney Pointe Circle (as applicable), nor shall it prevent

Declarant or its agents from placing signs to advertise the Property during the construction and sale period, including signs on the Common Elements and on any unsold Lot or Unit.

Section 11.11 Fences. No fence, wall, patio enclosure, hedge, garden or mass planting shall be erected, maintained or permitted upon the Property, other than those expressly approved by the Association in accordance with Section 9.1, or those installed by Declarant prior to the initial conveyance of each Lot.

Section 11.12 Clotheslines. No clothesline of any type shall be placed, used or allowed to remain on any Lot.

Section 11.13 Leases. Any lease of a Unit or portion thereof shall be in writing and shall provide that the lease of the Unit shall be subject in all respects to the Declaration, and that any failure by the tenant to comply with all of the terms of the Declaration shall constitute a default under the lease. No Unit may be leased for a period shorter than thirty (30) days.

Section 11.14 Use of Common Elements in General. No Owner shall obstruct the entrances, streets, sidewalks, driveways, parking areas and other facilities in the Common Elements in any way, or use them for other than their intended purposes. The Common Elements shall not be used for the storage of supplies, personal property or trash or refuse of any kind except trash receptacles placed in the Common Elements at the discretion of the Board. There shall be no bicycles, tricycles, wagons, toys or other miscellaneous personal property parked or left in the Common Elements at any time. All bicycles shall be parked in the area designated for bicycles. In general, no activity shall be carried on nor conditions maintained by any Owner either in his Unit or upon the Common Elements which despoils the appearance of the Property.

Section 11.15 Vehicles. No boats, motor homes, trailers, campers, mobile homes, recreational vehicles, golf carts, trucks (except pickup trucks used for personal transportation), commercial trucks of any size, recreational vehicles, motorized vans used for commercial purposes (as distinguished from vans used solely as passenger vehicles), wrecked vehicles, inoperable vehicles or any vehicle not regularly operated in day to day use shall be parked on the Property at any time. No significant automobile repair shall be allowed on the Property. The Association shall have the right to tow any vehicle in violation of this paragraph at its owner's expense.

Section 11.16 Parking. All vehicles must be parked only in the driveways or garages on each Lot, or in other parking spaces designated by the Association, and must not obstruct or interfere with the ingress or egress of others. In particular, no vehicle shall block the private access drive or the driveway of any other owner. All parking in the Common Elements shall be on a first-come, first served basis, and subject to any rules or regulations that may be promulgated by the Association. The paved driveway on each Lot may be used only by the owner of that Lot, and his agents and invitees. The Association shall have the right to tow any vehicle in violation of this paragraph at its owner's expense.



Section 11.17 Loitering. There shall be no loitering or parties in the Common Elements except in the places designated for such activity. There shall be no foul or abusive language, or alcohol consumption, in the Common Elements.

Section 11.18 Supervision of Children. Each Owner will provide supervision, by an adult or competent person over 16 years of age, of any child under 6 years of age at all times when they are in the Common Elements. Children and persons of any age shall not appropriate any part of the Common Elements for their personal use or play area.

Section 11.19 No Timeshares. No interest in any Unit may be subjected to a time share program, as that term is defined in N.C.G.S. §93A-41(10)

Section 11.20 Floor Load. There shall be no floor load in any Unit in excess of forty (40) pounds per square feet, unless an engineering determination of the floor load capacity in the area of heavy use is approved by the Association.

Section 11.21 Rules and Regulations. In addition to the restrictions set forth in this Article XI, reasonable rules and regulations governing the use of the Property may be made and amended from time to time by the Board. Copies of all such regulations and amendments thereto shall be posted prominently prior to their effective date, and shall be furnished by the Association to all Owners upon request.

Section 11.22 Enforcement. The Association or its agent shall have the right to enforce the provisions of this Article XI by assessing fines against any defaulting Owner in accordance with the procedures set forth in N.C.G.S. §47F-3-107A and the Bylaws, and any such fine shall deemed a special assessment levied by the Association against such Owner and such Owner's Lot, shall become the personal obligation of such Owner and shall become a lien against such Lot enforceable in accordance with Section 5.10.

## ARTICLE XII

### AMENDMENT OF DECLARATION

Section 12.1 General. Except as is otherwise specifically authorized herein, this Declaration may be amended only by the vote of not less than sixty-seven percent (67%) of the Members, and not less than fifty-one percent (51%) of the Mortgagees, cast in person or by proxy at a meeting duly held in accordance with the provisions of the Bylaws. No amendment to the Declaration shall be effective until executed on behalf of the Association by any officer designated for that purpose and recorded in the Office of the Register of Deeds of Union County, North Carolina. No amendment to this Declaration shall be adopted or passed which shall impair or prejudice the rights and priorities of any Mortgagee without the written consent of such Mortgagee. In addition, so long as Declarant is a Class B Member of the Association, any amendment of this Declaration (except as expressly provided in Sections 12.2 and 12.3) shall require the prior approval of any Agency holding or insuring a Mortgage.

Section 12.2 Amendments by Declarant without Approval of Owners. So long as it owns any portion of the Property, Declarant, without the consent or approval of any other

Owner, shall have the right to amend this Declaration: (a) to exercise any Special Declarant Rights specified in Article III of this Declaration; (b) to conform to the requirements of any law or governmental agency having legal jurisdiction over the Property; (c) to qualify the Property or any Lots and improvements thereon for mortgage or improvement loans made or insured by an Agency; or (d) to comply with the requirements of law or regulations of any Agency regarding the purchase or sale of such Lots and improvements or mortgage interests therein. A letter from an official of any such Agency, including, without limitation, the Veterans Administration, the Department of Housing and Urban Development, the Federal Home Loan Mortgage Corporation, the Government National Mortgage Association or the Federal National Mortgage Association, requesting or suggesting an amendment necessary to comply with the requirements of such Agency shall be sufficient evidence of the approval of such Agency, provided that the changes made substantially conform to such request or suggestion. Such amendment shall become effective upon the date of its recordation in the Office of the Register of Deeds of Union County, North Carolina.

Section 12.3 Other Amendments without Approval of Owners. Declarant, for so long as it is a Class B Member of the Association, and, thereafter, the Board, may amend this Declaration as shall be necessary, in its opinion, and without the consent of any Owner, to qualify the Association or the Common Elements, or any portion thereof, for tax-exempt status, or to conform the provisions of this Declaration to the requirements of the North Carolina Planned Community Act. Such amendment shall become effective upon the date of its recordation in the Office of the Register of Deeds of Union County, North Carolina.

### ARTICLE XIII

#### TERMINATION

This Declaration may be terminated only by the vote of not less than eighty percent (80%) of the Members and not less than eighty percent (80%) of the Mortgagees, cast in person or by proxy in a meeting duly held in accordance with provisions of the Bylaws, and as evidenced by the execution of a written termination agreement by the requisite number of Owners and Mortgagees, complying with the requirements of N.C.G.S. §47F-2-118. The termination agreement must be recorded in the Office of the Register of Deeds of Union County, North Carolina before it becomes effective. Notwithstanding the foregoing, so long as Declarant is a Class B Member of the Association, any termination of this Declaration shall require the prior approval of any Agency holding or insuring a Mortgage. Following the recordation of the termination agreement, the interests of the Owners and Mortgagees in the Property shall be as provided in N.C.G.S. §47F-2-118.

### ARTICLE XIV

#### MORTGAGEE PROTECTION

Section 14.1 General. This Article XIV establishes certain standards and covenants for the benefit of Mortgagees. This Article XIV is supplemental to, and not in substitution for, any other provisions of the Project Documents, but in the event of any conflict between the

provisions of the Project Documents and the provisions of this Article XIV, the provisions of this Article XIV shall control.

Section 14.2 Percentage of Mortgagees. Wherever in the Project Documents the approval or consent of a specified percentage of Mortgagees is required, it shall mean the approval or consent of Mortgagees holding Mortgages on Lots which have allocated to them that specified percentage of votes in the Association, as compared to the total votes in the Association allocated to all Lots then subject to Mortgages held by Mortgagees.

Section 14.3 Rights to Examine Books and Records. Any Mortgagee, and any insurer or guarantor of a loan secured by a Mortgage, shall have the right to examine, during normal business hours and upon reasonable notice, the books and records of the Association, including copies of the Project Documents, as amended, and the financial statements of the Association, and to be furnished, upon written request, at least one copy of the annual financial statement and report of the Association, such annual statement and report to be furnished within ninety (90) days following the end of each fiscal year. If any Mortgagee requests, and agrees to pay the cost of the audit, the financial statement shall be audited by an independent certified public accountant. Upon ninety (90) days prior written notice, the Association shall furnish an audited financial statement for the immediately preceding fiscal year to any Agency, provided that the Agency agrees to pay the cost of the audit.

Section 14.4 Mortgagee's Rights to Notice. Any Mortgagee (including, for purposes of this Section 14.4, any insurer or guarantor of a loan secured by a Mortgage that has notified the Association in writing of its name and address, and that it insured or guarantees a Mortgage) shall have the right to receive from the Association prompt written notice of the following:

- (a) Default under any of the terms and provisions of the Project Documents by any Owner owning a Unit encumbered by a Mortgage held, insured, or guaranteed by such Mortgagee, which default remains uncured for a period of sixty (60) days.
- (b) Any loss or damage to or condemnation or taking of the Common Elements, or any loss or damage to or condemnation or taking of a Unit encumbered by a Mortgage held, insured or guaranteed by such Mortgagee.
- (c) Any lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association.
- (d) Any proposed action by the Association, the Board, or the Owners, which under the terms of the Project Documents requires the consent of all or any portion of the Mortgagees.

The failure of any Mortgagee to respond within thirty (30) days to any written request of the Association, sent by registered or certified mail, return receipt requested, for approval of an addition or amendment to the Project Documents wherever mortgagee approval is required shall constitute an implied approval by that Mortgagee of the proposed addition or amendment.

Section 14.5 Consent and Notice Required. Notwithstanding any other provision of this Declaration or the Project Documents, no amendment of any material provision of the

Project Documents described in this Section 14.5 shall be effective without notice to all Mortgagees, as required by Section 14.4, the vote of at least sixty-seven percent (67%) of the Members (or any greater percentage required by the terms of the Project Documents), and the approval of at least fifty-one percent (51%) of the Mortgagees (or any greater percentage required by the terms of the Project Documents). The foregoing approval requirements shall not apply to any Supplementary Declarations executed and recorded by Declarant in order to exercise its Development Rights, or executed and recorded in accordance with Article III. A change to any of the following items will be considered material:

- (a) Voting rights.
- (b) Increases in assessments that raise the previously assessed amount by more than twenty-five percent (25%), assessment liens, or the priority of assessment liens.
- (c) Reductions in reserves for maintenance, repair, and replacement of the Common Elements.
- (d) Responsibility for maintenance and repairs of the Units, or the Common Elements.
- (e) The expansion or contraction of the Project, or the addition, annexation or withdrawal of property to or from the Project.
- (f) The requirements for insurance and fidelity bonds.
- (g) The imposition of any restrictions on the leasing of Units.
- (h) The imposition of any restrictions on an Owner's right to sell or transfer his Unit.
- (i) The restoration or repair of the Property after casualty damage or partial condemnation in a manner other than that specified in the Project Documents.
- (j) Any termination of this Declaration after the occurrence of substantial destruction or condemnation of the Project.
- (k) Any provision that expressly benefits the Mortgagees, or any insurer of a loan secured by a Mortgage.
- (l) Establishment of self-management by the Association where professional management has been required by any Agency.

Section 14.6 Other Mortgage Rights. Notwithstanding any other provision of this Declaration or the Bylaws, the Association may not change the period for collection of regularly budgeted assessments to other than monthly without the consent of all Mortgagees. Any representative of a Mortgagee may attend and address any meeting that an Owner may attend.

Section 14.7 Enforcement. The provisions of this Article XIV are for the benefit of all Mortgagees and their successors, and may be enforced by any of them by any available means.

## ARTICLE XV

### EMINENT DOMAIN

If all or any part of the Property is taken in condemnation or by eminent domain, the award for such taking shall be distributed in accordance with the procedure set forth in N.C.G.S. §47F-1-107.

## ARTICLE XVI

### MISCELLANEOUS PROVISIONS

Section 16.1 Covenants Running with the Land. Each Owner, by the acceptance of a deed of conveyance for a Lot, accepts title to that Lot and Unit subject to all restrictions, conditions, covenants, reservations, liens and charges, and the jurisdiction, rights and powers created or reserved by this Declaration. All rights, benefits and privileges of every character hereby granted, created, reserved, or declared, and all impositions and obligations hereby imposed, shall be deemed to be covenants running with the land, and shall bind any person having at any time any interest or estate in said land, and shall inure to the benefit of such person in like manner as though the provisions of this Declaration were recited and stipulated at length in each and every deed of conveyance.

Section 16.2 Construction and Enforcement. The provisions of this Declaration shall be liberally construed to effectuate the purpose of creating, preserving and maintaining the development and operation of a residential townhouse community of the highest quality. Any Owner, the Association, Declarant or any Mortgagee may enforce these covenants and restrictions by any proceedings at law or in equity against any person or persons violating or attempting to violate any covenant or restriction, either to restrain or enjoin violation or to recover damages, or both. The Association may bring any proceeding at law or in equity to enforce any lien in their favor created hereby.

Subject to the requirements for a court order set forth below, if any structure is built on the Property in violation of this Declaration, the Association, or its designated agents, may upon reasonable notice to the Owner (or without notice if the violation creates an immediate threat to the health, safety, or welfare of any resident of the Property) enter upon the Lot where such violation exists, and abate or remove the same at the expense of the Owner, provided, however, that the Association shall then, at the expense of the Owner, make the necessary repairs or construction to ensure that the property and improvements where such violation occurred are restored to the same condition in which they existed prior to such violation, and any such entry, abatement, removal or restoration and construction work shall not be deemed a trespass. Any amounts expended by the Association in so removing or abating any such violation and in restoring or repairing said property shall immediately be deemed a special assessment levied by the Association against such violating Owner and such Owner's Lot, shall become a personal

obligation of such Owner and shall become a lien upon such Lot enforceable as under the provisions of Section 5.10. Notwithstanding the foregoing, the Association shall not have the right to exercise the foregoing powers without an order from a court of competent jurisdiction if the abatement sought by the Association involves the alteration or demolition of any improvements within the Property.

There shall be, and there is hereby, created and declared to be a conclusive presumption that any violation or breach or any attempted violation or breach of any of the within covenants or restrictions cannot be adequately remedied by action at law or exclusively by recovery of damages. Any defaulting party shall be liable for the costs of enforcement of such covenants and restrictions, including without limitation attorneys' fees and court costs.

**Section 16.3 Arbitration.** Each Owner, by accepting a deed to a Unit, agrees that any unresolved matter between one or more Owners, between one or more Owners and Declarant, or between one or more Owners and the Board or the Association, shall be submitted to binding arbitration pursuant to the North Carolina Uniform Arbitration Act, as set forth in N.C.G.S. §1-567.1 et seq., and as the same shall be amended from time to time. The fees and expenses of arbitration shall be paid as set forth in the award and shall not be a Common Expense unless all Owners so agree in writing.

**Section 16.4 Waiver.** No covenants, restrictions, conditions, obligations, or provisions contained in 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.

**Section 16.5 Severability.** The invalidity of any covenant, restriction, condition, limitation or any other provision of this Declaration, or of any part of the same, shall not impair or affect in any manner the validity or enforceability of the rest of the Declaration.

**Section 16.6 Time Limits.** If any of the privileges, covenants, restrictions or rights created by this Declaration shall be unlawful or void for violation of (a) the rule against perpetuities or some analogous statutory provision, (b) the rule restricting restraints on alienation, or (c) any other statutory or common law rules imposing time limits, then such provision shall continue only until twenty-one (21) years after the death of the last surviving child, now living, of the current shareholders of Robinson, Bradshaw & Hinson, P.A.

**Section 16.7 No Liability.** Neither Declarant, nor any subsidiary of Declarant, nor any employee, agent, successor or assign of Declarant or any such subsidiary, shall be liable for any claim or damage whatsoever arising out of any actions performed pursuant to or in accordance with any authority granted or delegated to them by this Declaration.

**Section 16.8 Headings.** The heading to each Article and Section of this Declaration is inserted only as a matter of convenience for reference and in no way limits or describes the scope or intent of such Article or Section, or this Declaration in general.

**ARTICLE XVII**  
**CONSENT OF MORTGAGEE**

Parcel I and Parcel II are currently encumbered by the lien of a Deed of Trust and Security Agreement executed and delivered by Declarant to PRLAP, Inc., as Trustee for Bank of America, N.A., and recorded May 6, 2005, in Book 3771, Page 832 of the Union County Public Registry. A Consent of Mortgagee executed by Bank of America, N.A. and PRLAP, Inc., as Trustee, consenting to the execution and recordation of this Declaration, is being recorded in the Union County Public Registry simultaneously with the recording of this Declaration.

**ARTICLE XVIII**  
**AGENCY APPROVAL**

Notwithstanding anything to the contrary contained in this Declaration, Declarant shall not exercise its Development Rights to add Parcel II to the Property without the prior written consent of each Agency that holds, insures or guarantees any Mortgage at the time such property is to be added to the Project. In addition, if the Federal National Mortgage Association (the "FNMA") holds any mortgage in the existing Project at the time Parcel II is to be added, Declarant shall provide FNMA with title evidence satisfactory to FNMA that discloses any lien, easement or other encumbrance affecting the property to be annexed or which will affect the existing Project after such addition.

[signatures begin on the following page]

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

DECLARANT:

FIELDSTONE AT MONROE, LLC

By: [Signature] (SEAL)  
Name: Quinton M. Gandy  
Title: Manager

STATE OF NORTH CAROLINA  
COUNTY OF MECKLENBURG

\* a/k/a Quinton M. Gandy

I, Linda D. Laughey, a Notary Public for said County and  
State, do hereby certify that Quinton M. Gandy \*, Manager of FIELDSTONE AT MONROE,  
LLC, a North Carolina limited liability company, personally appeared before me this day and  
acknowledged the due execution of the foregoing instrument on behalf of the company.

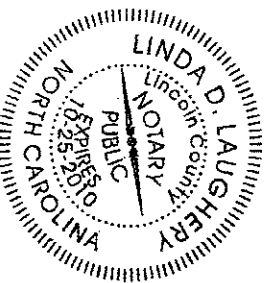
WITNESS my hand and official seal, this the 22<sup>nd</sup> day of December, 2006.

[Signature]  
Notary Public

My commission expires:

10/25/2010

[NOTARIAL SEAL]





**EXHIBIT A****LEGAL DESCRIPTION OF PROPERTY**

BEING ALL that certain tract or parcel of land located in Union County, North Carolina, and described as follows:

**BEGINNING** at a point in the right of way of Avery Parker Road, State Road Number 2143, a common corner with the southeastern property corner of the James Dennis and Helena Rape property as shown on that Deed recorded in Deed Book 3389 at page 480, and runs thence with six (6) common lines with the Rape property, 1<sup>st</sup>. North 15 degrees 27 minutes 00 seconds East 254.27 feet, thence 2<sup>nd</sup>. North 29 degrees 10 minutes 00 seconds East 308.00 feet, thence 3<sup>rd</sup>. North 41 degrees 03 minutes 05 seconds East 298.64 feet to a point, thence 4<sup>th</sup>. with the arc of a curve in a Northwesterly direction, said arc having a chord bearing North 61 degrees 59 minutes 48 seconds West, a chord distance 69.34 feet, said arc having a radius 180.00 feet, an arc distance of 69.78 feet, thence 5<sup>th</sup>. North 50 degrees 53 minutes 27 seconds West 277.96 feet to a point, thence 6<sup>th</sup>. With the arc of a curve in a Southwesterly direction, said arc having a chord bearing, South 84 degrees 01 minute 29 seconds West, a chord distance 42.49 feet, said arc having a radius 30.00 feet, an arc distance 47.21 feet, to a point in the southern right of way line of North Carolina Highway 200, thence with the southern right of way line of North Carolina Highway 200, North 38 degrees 56 minutes 26 seconds East 120.00 feet, thence leaving the southern right of way of North Carolina Highway 200 and with six common lines with the West Congregation of Jehovah's Witnesses, Monroe, NC (Deed Book 798 at page 375 and Deed Book 2091 at page 125), 1<sup>st</sup>. with the arc of a curve in a Southeasterly direction, said arc having a chord bearing, South 05 degrees 58 minutes 31 seconds East, an chord distance 42.36 feet, said arc having a radius 30.00 feet, an arc distance of 47.04 feet, thence 2<sup>nd</sup>. South 50 degrees 53 minutes 27 seconds East 278.31 feet, thence 3<sup>rd</sup>. with the arc of a curve in a Southeasterly direction, said arc having a chord bearing South 64 degrees 04 minutes 42 seconds East, a chord distance 54.75 feet, said arc having a radius 120.00 feet, an arc distance 55.24 feet, thence 4<sup>th</sup>. South 77 degrees 15 minutes 57 seconds East 26.97 feet, thence 5<sup>th</sup>. North 34 degrees 30 minutes 49 seconds East 279.52 feet to a found iron, thence 6<sup>th</sup>. North 45 degrees 17 minutes 43 seconds East 198.53 feet to a nail in a headwall, common corner with Michael E. and Amanda Daniel (now or formerly) as shown in Deed Book 883 at page 038, Union County Register of Deeds, thence with two lines with Daniel's property, 1<sup>st</sup>. South 52 degrees 54 minutes 15 seconds East 216.74 feet to a found iron, thence 2<sup>nd</sup>. North 19 degrees 18 minutes 00 seconds East 419.51 feet to a found iron in the southern property line of Charles Robert Helms and Nancy Helms (now or formerly) property in Deed Book 306 at page 832 and Deed Book 290 at page 196, Union County Registry, thence with Helms line South 52 degrees 39 minutes 57 seconds East 85.01 feet to a found iron in the western property line of Carolina Realty & Investment, Corp. (now or formerly) shown in Deed Book 351 at page 343, Union County Registry, thence South 05 degrees 43 minutes 41 seconds East 1358.18 feet to a found iron, thence North 70 degrees 47 minutes 15 seconds West 655.45 feet to a found iron, thence South 19 degrees 17 minutes 22 seconds West 642.79 feet to a found iron, thence South 83 degrees 09 minutes 08 seconds West 109.35 feet to a nail found in the centerline of Avery Parker Road, State Road Number 2143, thence with the centerline of Avery Parker Road, State Road Number 2143, four (4) calls as follows: 1<sup>st</sup>. North 46 degrees 01 minute 35 seconds West 99.93 feet to a found nail, thence 2<sup>nd</sup>. North 42 degrees 07 minutes 55 seconds

West 100.00 feet, thence 3<sup>rd</sup>. North 41 degrees 02 minutes 50 seconds West 100.00 feet, thence 4<sup>th</sup>. North 38 degrees 07 minutes 45 seconds West 142.63 feet, thence a final line within the right of way of Avery Parker Road, State Road Number 2143, North 42 degrees 26 minutes 18 seconds West 70.71 feet to a point, a common corner with the southeastern property corner of the James Dennis and Helena Rape property as shown on that Deed recorded in Deed Book 3389 at page 480, the point and place of BEGINNING, and being and containing a 26.15 acre tract, as shown on that unrecorded plat drawn by Walter L. Gordon and Associates, NCRLS, dated August 21, 2001 and revised on January 18, 2005, to which unrecorded plat reference is hereby made for a more complete description.

LESS AND EXCEPT all of that certain tract or parcel of land located in Union County, North Carolina, and described as follows:

To locate the point and place of Beginning, commence at an iron found in the southeastern margin of the right-of-way of N.C. Highway 200 (60' public right-of-way), said iron being the northwestern corner of the property of West Congregation of Jehovah's Witnesses, Monroe, NC (hereinafter, "West Congregation") (now or formerly) as described in Deed Book 798, Page 375 in the Union County Public Registry (hereinafter the "Registry"); thence, with and along the northeastern boundary line of the property of West Congregation, S. 52-54-15 E. 385.22 feet to a nail found in the boundary line of the property of Michael E. Daniel and Amanda (now or formerly) as described in Deed Book 883, Page 038 in the Registry, the point and place of BEGINNING; thence, with and along the boundary line of the property of Michael E. Daniel, S. 52-54-15 E. 216.74 feet to an iron found in a 68' Duke Power right-of-way; thence, with and along a line in the 68' Duke Power right-of-way and with and along the boundary lines of the property of Michael E. Daniel and Roy W. Richards, Jr. and Dorothy as described in Deed Book 306, Page 399 in the Registry, N. 19-18-00 E. 419.51 feet to an iron found in the boundary line of the property of Charles Robert Helms and Nancy (now or formerly) as described in Deed Book 306, Page 832 and Deed Book 290, Page 196 in the Registry; thence, with and along the boundary line of the property of Charles Robert Helms, S. 52-39-57 E. 85.01 feet to an iron found in the boundary line of the property of Carolina Realty Investment Corp. (now or formerly) as described in Deed Book 351, Page 343 in the Registry; thence, with and along the boundary line of the property of Carolina Realty Investment Corp. and with and along the boundary line of Lot 26, the terminus of the right-of-way of Knollgate Drive, Lots 27 through 31 and Lot 92 of Carmel Village Extension as shown on a plat recorded in Plat Cabinet C, File 85 in the Registry, S. 05-43-41 E. 1,358.18 feet to an iron found, a corner of the property of Billy Frank Norwood and Rebecca (now or formerly) as described in Deed Book 849, Page 797 in the Registry; thence, with and along the boundary line of the property of Billy Frank Norwood, N. 70-47-15 W. 459.72 feet to a point in the boundary line of the property of Paul Neal Helms (now or formerly) as shown on "Boundary Survey of: 12.57 acres, N.C. Hwy. 200 & Avery Parker Road, dated March 6, 2003, prepared by Walter Gordon, NCPLS (the "Survey");" thence, with and along the boundary line of the property of Paul Neal Helms, the following five (5) courses and distances: (1) N. 19-12-45 E. 122.97 feet to a point; (2) N. 09-34-01 W. 140.86 feet to a point; (3) N. 70-47-15 W. 127.63 feet to a point; (4) N. 19-17-23 E. 201.01 feet to a point; and (5) N. 82-02-29 W. 95.15 feet to a point, the southeastern corner of that 0.93 acre tract as shown on the Survey; thence, with and along the boundary line of that 0.93 acre tract the following four (4) courses and distances: (1) N. 07-57-31 E. 60.00 feet to a point; (2) N. 82-02-29 W. 6.17 feet

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to a point; (3) with the arc of a circular curve to the right having a radius of 120.00 feet, an arc length of 10.00 feet and a chord bearing and distance of N. 79-39-13 W. 10.00 feet to a point; and (4) N. 77-15-57 W. 247.19 feet to a point in the boundary line of the property of West Congregation; thence, with and along the boundary line of the property of West Congregation, the following two (2) courses and distances: (1) N. 34-30-49 E. 279.52 feet to an iron found; and (2) N. 45-17-43 E. 198.53 feet to the point and place of BEGINNING, all as shown on the Survey containing 12.28 acres, more or less.

**EXHIBIT B****LEGAL DESCRIPTION OF PARCEL II**

BEING ALL that certain tract or parcel of land located in Union County, North Carolina, and described as follows:

To locate the point and place of Beginning, commence at an iron found in the southeastern margin of the right-of-way of N.C. Highway 200 (60' public right-of-way), said iron being the northwestern corner of the property of West Congregation of Jehovah's Witnesses, Monroe, NC (hereinafter, "West Congregation") (now or formerly) as described in Deed Book 798, Page 375 in the Union County Public Registry (hereinafter the "Registry"); thence, with and along the northeastern boundary line of the property of West Congregation, S. 52-54-15 E. 385.22 feet to a nail found in the boundary line of the property of Michael E. Daniel and Amanda (now or formerly) as described in Deed Book 883, Page 038 in the Registry, the point and place of BEGINNING; thence, with and along the boundary line of the property of Michael E. Daniel, S. 52-54-15 E. 216.74 feet to an iron found in a 68' Duke Power right-of-way; thence, with and along a line in the 68' Duke Power right-of-way and with and along the boundary lines of the property of Michael E. Daniel and Roy W. Richards, Jr. and Dorothy as described in Deed Book 306, Page 399 in the Registry, N. 19-18-00 E. 419.51 feet to an iron found in the boundary line of the property of Charles Robert Helms and Nancy (now or formerly) as described in Deed Book 306, Page 832 and Deed Book 290, Page 196 in the Registry; thence, with and along the boundary line of the property of Charles Robert Helms, S. 52-39-57 E. 85.01 feet to an iron found in the boundary line of the property of Carolina Realty Investment Corp. (now or formerly) as described in Deed Book 351, Page 343 in the Registry; thence, with and along the boundary line of the property of Carolina Realty Investment Corp. and with and along the boundary line of Lot 26, the terminus of the right-of-way of Knollgate Drive, Lots 27 through 31 and Lot 92 of Caramel Village Extension as shown on a plat recorded in Plat Cabinet C, File 85 in the Registry, S. 05-43-41 E. 1,358.18 feet to an iron found, a corner of the property of Billy Frank Norwood and Rebecca (now or formerly) as described in Deed Book 849, Page 797 in the Registry; thence, with and along the boundary line of the property of Billy Frank Norwood, N. 70-47-15 W. 459.72 feet to a point in the boundary line of the property of Paul Neal Helms (now or formerly) as shown on "Boundary Survey of: 12.57 acres, N.C. Hwy. 200 & Avery Parker Road, dated March 6, 2003, prepared by Walter Gordon, NCPLS (the "Survey");" thence, with and along the boundary line of the property of Paul Neal Helms, the following five (5) courses and distances: (1) N. 19-12-45 E. 122.97 feet to a point; (2) N. 09-34-01 W. 140.86 feet to a point; (3) N. 70-47-15 W. 127.63 feet to a point; (4) N. 19-17-23 E. 201.01 feet to a point; and (5) N. 82-02-29 W. 95.15 feet to a point, the southeastern corner of that 0.93 acre tract as shown on the Survey; thence, with and along the boundary line of that 0.93 acre tract the following four (4) courses and distances: (1) N. 07-57-31 E. 60.00 feet to a point; (2) N. 82-02-29 W. 6.17 feet to a point; (3) with the arc of a circular curve to the right having a radius of 120.00 feet, an arc length of 10.00 feet and a chord bearing and distance of N. 79-39-13 W. 10.00 feet to a point; and (4) N. 77-15-57 W. 247.19 feet to a point in the boundary line of the property of West Congregation; thence, with and along the boundary line of the property of West Congregation, the following two (2) courses and distances: (1) N. 34-30-49 E. 279.52 feet to an iron found; and

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(2) N. 45-17-43 E. 198.53 feet to the point and place of BEGINNING, all as shown on the Survey containing 12.28 acres, more or less.

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**EXHIBIT C**  
**BYLAWS OF**  
**FIELDSTONE**  
**TOWNHOME OWNERS ASSOCIATION, INC.**

**Section 1**

**Definitions**

The words, phrases and terms used in these Bylaws shall have the meanings as set forth in the Declaration of Covenants, Conditions and Restrictions for Fieldstone (the "Declaration"), recorded in the Office of the Register of Deeds for Union County, North Carolina, to which a copy of these Bylaws is attached as Exhibit C.

**Section 2**

**Administration of Townhomes**

**Section 2.1** Authority and Responsibility: Except as otherwise specifically provided in the Project Documents, the Association shall be responsible for administering, operating and managing the Common Elements, and shall have, without limitation, all of the powers specified in N.C.G.S. §47F-3-102.

**Section 2.2** Official Action: Unless specifically required in the Project Documents, all actions taken or to be taken by the Association shall be valid when such are approved by the Board as hereinafter set forth or when taken by the committee, person or entity to whom such authority has been duly delegated by the Board as set forth in the Project Documents or these Bylaws. The Association, its Board, officers and members shall at all times act in conformity with the North Carolina Nonprofit Corporation Act, the North Carolina Planned Community Act, and the Project Documents.

**Section 3**

**Offices - Seal - Fiscal Year**

**Section 3.1** Principal Office and Registered Office: The initial principal office and registered office of the Association shall be located at 17818 Statesville Road, Suite 211, Cornelius, NC 28031.

**Section 3.2** 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 3.3 Seal: The seal of the Association shall contain the name of the Association, the word "Seal", year of incorporation and such other words and figures as desired by the Board.

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

#### Section 4

##### Membership

Section 4.1 Qualification: Membership in the Association shall be limited to the Owners, and every Owner of a Lot shall automatically be a member of the Association. Membership in the Association shall be apurtenant to and may not be separated from Lot ownership.

Membership in the Association shall inure automatically to 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 Union County of the conveyance of the Lot in question shall govern the date of ownership of each particular Lot. However, in the case of death, the transfer of ownership shall occur on date of death in the case of intestacy or date of probate of the will in the case of testacy. Until a decedent's will is probated, the Association may rely on the presumption that a deceased Owner died intestate.

Section 4.2 Place of Meetings: All meetings of the membership shall be held at a place in Union County, North Carolina designated by the Board.

Section 4.3 Annual Meetings: A meeting of the Association shall be held at least once each year. The first Annual Meeting of the Association shall be held on the date and hour designated by Declarant. Thereafter, the Annual Meeting of the Association shall be held on the second Monday in February of each year at 8:00 p.m., Eastern Standard Time. If the second Monday in February shall be a legal holiday, the Annual Meeting shall be held at the same hour on the first day following which is not a legal holiday. At such meetings, the Board shall be elected in accordance with Section of these Bylaws, and the Members shall transact such other business as may properly come before them.

Section 4.4 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 Sections 4.5 and 4.6. A meeting so called shall be designated and treated for all purposes as the Annual Meeting.

Section 4.5 Special Meetings: After the first Annual Meeting of the Members, special Meetings of the Members may be called at any time by the President; by not less than twenty percent (20%) of all Owners; or by not less than fifty-one percent (51%) of the Board members. Business to be acted upon at all Special Meetings shall be confined to the subjects stated in the notice of such meeting.

Section 4.6 Notices of Meetings: Written or printed notice stating the time and place of a membership meeting, including Annual Meetings, and the items on the agenda, including the general nature of any proposed amendment to the Declaration or these Bylaws, any budget changes, and any proposal to remove a director or officer, shall be delivered not less than ten (10) nor more than fifty (50) days before the date of any such membership meeting, either personally or by mail, by or at the discretion of the President or the Secretary, to the address of each Lot. Notice shall be deemed given upon deposit in the mail depository of each Lot.

Notice given to any one tenant in common, tenant by entirety or other joint Owner of a Lot shall be deemed notice to all joint Owners of the subject Lot.

The notice of meeting shall specifically state the purpose or purposes for which the meeting is called.

Section 4.7 Quorum: Except as otherwise provided in these Bylaws, the presence in person or by proxy of Members entitled to cast twenty-five percent (25%) of the votes which may be cast for election of the Board shall, constitute a quorum at all meetings of the Members. If a quorum is not present or represented at any meeting, the Members entitled to vote thereat shall have the power to adjourn the meeting from time to time, without notice other than the announcement at the meeting, until a quorum is present or is represented. The Members at any 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.

Section 4.8 Voting Rights: Each Member shall be entitled to the voting rights set forth in the Declaration. If fee simple title to a Lot is owned of record by more than one person or entity, all such persons or entities shall be Members of the Association, but the vote with respect to any such jointly owned Lot shall be cast as hereinafter provided.

If the fee simple title to any Lot is owned of record by two or more persons or entities (whether individually or in a fiduciary capacity), the vote with respect to any such jointly owned Lot may be cast by any one of the joint Owners in person or by proxy, except that the holder or holders of a life estate in a Lot shall have the sole right to cast the votes allocated to the Lot. If more than one of the joint Owners vote or more than one life estate holder in a Lot vote, the unanimous action of all joint Owners or joint life estate holders voting shall be necessary to effectively cast the votes allocated to the particular Lot.

Such unanimous action shall be conclusively presumed if any one of such multiple Owners casts the votes allocated to that Lot without protest being made promptly to the person presiding over the meeting by any of the other of such joint Owners.

In no event may the vote which may cast with respect to any Lot be divided among joint Owners of the Lot or cast in any manner other than as a whole, it being the intention of this Section 4.8 that there be no "splitting" of votes that may be cast by any Member or Members.

Section 4.9 Proxies: Members may vote either in person or by agents duly authorized by written proxy executed by the subject Member or by his duly authorized attorney-in-fact. A proxy is not valid after the earlier of the term stated therein or the expiration of twelve (12) months from the date of its execution. Unless a proxy otherwise provides, any proxy holder may



appoint in writing a substitute to act in 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 4.9 except by written notice of revocation delivered to the person presiding over a meeting of the Association.

All of the provisions in the Declaration concerning voting by joint Owners shall apply to the vote cast for any one Lot by two or more proxy holders.

Section 4.10 Majority-Vote: The casting of a majority of the votes represented at a meeting at which a quorum is present, in person or by proxy, shall be binding for all purposes except where a different percentage vote is stipulated by these Bylaws, the Declaration or the Articles of Incorporation of the Association.

Section 4.11 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.

## Section 5

### Board

Section 5.1 General Powers: The business and affairs of the Association shall be managed by the Board or by such committees as the Board may establish pursuant to Section 6 of these Bylaws. Provided, however, the Board may not act on behalf of the Association to amend the Declaration, 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 5.2 Number, Term and Qualification: The initial Board shall consist of the three (3) individuals appointed by Declarant whose names are set forth in the Articles of Incorporation of the Association. Board members may succeed themselves in office. The Board of Directors, before each annual meeting of Members, shall determine the number constituting the Board of Directors for the ensuing year, which number shall not exceed seven (7) or be less than three (3).

Section 5.3 Election of Board Members: The election of all Board members shall be by ballot. Persons receiving the highest number of votes (see Section 4.8) shall be elected. Cumulative voting is not permitted.

Section 5.4 Removal: Any Board member, other than a member appointed by Declarant, may be removed from the Board, with or without cause, by a vote of at least sixty-seven percent (67%) of the votes entitled to be cast by all Members present and entitled to vote at any meeting of the Membership at which a quorum is present. Provided, the notice of the meeting must state that the question of such removal will be acted upon at the subject meeting.

If any Board members are so removed, their successors as Board members may be elected by the membership at the same meeting to fill the unexpired terms of the Board members so removed.

Section 5.5 Vacancies: A vacancy occurring in the Board may only be filled by a majority of the remaining Board members, though less than a quorum, or by the sole remaining Board member, but a vacancy created by an increase in the authorized number of Board members shall be filled only by election at an Annual or substitute Annual Meeting or at a Special Meeting of Members called for that purpose or by unanimous consent of the Members without meeting. The Members may elect a Board member at any time to fill any vacancy not filled by the Board members. As indicated in Section 5.5, the Membership shall have the first right to fill any vacancy created by the Membership's removal of a Board member.

Section 5.6 Chairman: A member of the Board shall be elected as Chairman of the Board by the Board members at the first meeting of the Board. The Chairman shall preside at all meetings of the Board and perform such other duties as may be directed by the Board. Prior to election of a Chairman and/or in the event that the Chairman is not present at any meeting of the Board, the President shall preside.

Section 5.7 Compensation: No Member of the Board shall receive any compensation from the Association for acting as such. Provided, however, each Board member shall be reimbursed for reasonable out-of-pocket expenses incurred and paid by him on behalf of the Association, and nothing herein shall prohibit the Board from compensating a Board member for unusual and extraordinary services rendered on the basis of quantum meruit. Further provided, each Board member, by assuming office, waives his right to institute suit against or make claim upon the Association for compensation based upon quantum meruit.

Section 5.8 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 5.9 Liability of Board Members: To the extent permitted by the provisions of the North Carolina Nonprofit Corporation Act in effect at the applicable time, each Board member is hereby indemnified by the Association with respect to any liability and expense of litigation arising out of his activities as a Board member. Such indemnity shall be subject to approval by the Members only when such approval is required by said Act.

Section 5.10 Meetings of the Board:

A. Regular Meetings: Regular Meetings shall be held, without notice, at such hour and address as may be fixed from time to time by resolution of the Board. 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 board member, after not less than three (3) or more than thirty (30) days written notice to each Board member.

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: (1) one day following deposit of 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; (2) deposit of same in his Lot mail box; (3) 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 Boar 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 Union 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 a quorum is present shall be regarded as the act or decision of the Board.

Section 5.11 Action Without Meeting: The Board members 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 the Board members. Any action so approved shall have the same effect as though taken 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 5.12 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 Board member who voted in favor of such action.

Section 5.13 Powers and Duties: The Board shall have the authority to exercise all powers and duties of the Association necessary for the administration of the affairs of the Project except such powers and duties as by law or by the Project Documents may not be delegated by the Owners to the Board. The powers and duties to be exercised by the Board shall include, but shall not be limited to, the following:

A. Operation, care, upkeep and maintenance of the Common Elements to the extent such operation, care, upkeep, and maintenance is not the obligation of the Owners;

B. Determination of the funds required for operation, administration, maintenance and other affairs of the Project and collection of the Common Expenses from the Owners, as provided in the Project Documents;

- C. Employment and dismissal of personnel (including without limitation the Independent Manager) necessary for the efficient operation, maintenance, repair, and replacement of the Common Elements;
- D. Adoption of rules and regulations covering the details of the operation, maintenance, repair, replacement, use and modification of the Common Elements;
- E. Opening of bank accounts on behalf of the Association and designating the signatories required therefor;
- F. Obtaining insurance as required or permitted under the terms of the applicable provisions of the Declaration;
- G. Keeping detailed, accurate records of the receipts and expenditures of the Association; obtaining annual audits of the financial records of the Association from the Association's public accountant; furnishing the annual reports; and furnishing current budgets. All books and records shall be kept in accordance with good and accepted accounting practices and the same shall be available for examination by all Owners or their duly authorized agents or attorneys, at convenient hours on working days;
- H. Keeping a complete record of the minutes of all meetings of the Board and Membership in which minute book shall be inserted actions taken by the Board and/or Members by consent without meeting;
- I. Supervising all officers, agents and employees of the Association and insuring that their duties are properly performed;
- J. 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, the imposition of changes for late payment of assessments, and after notice and an opportunity to be heard, in accordance with the procedures specified in N.C.G.S. §47F-3-107A, suspending privileges of Owners or levying reasonable fines for violations of the Declaration, Bylaws and rules and regulations of the Association, such fines not to exceed the greater of \$150.00 per day, or such higher maximum amount as may be specified in N.C.G.S. §47F-3-107A;
- K. Making of repairs, additions, and improvements to or alterations or restoration of the Property in accordance with the other provisions of these Bylaws and the Declaration, after damage or destruction by fire or other casualty, or as a result of a condemnation or eminent domain proceeding;
- L. 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;
- M. Enforcing, on behalf of the Association, any other rights or remedies of the Association, including, but not limited to, the institution of civil actions; provided, however, that

no civil action may be brought by the Association that seeks more than \$25,000.00 in damages without the written consent of at least sixty-seven (67%) of the Members;

N. Paying all taxes and assessments which are or may become liens against any part of the Project, other than the Lots, and to assess the same against the Owners in the manner herein provided;

O. Hiring attorneys and other professionals;

P. Maintaining and repairing any Lot, if such maintenance or repair is required by the Declaration or is necessary in the discretion of the Board to protect the Common Elements or any other Lot or if the Owner of such Lot has failed or refused to perform such maintenance or repair within a reasonable time after written notice of the necessity of said maintenance or repair has been delivered or mailed by the Board to said Owner, provided that the Board shall levy a special assessment against such Owner for the costs of said maintenance or repair;

Q. Entering any Lot when necessary in connection with any maintenance or construction for which the Board is responsible; provided, such entry shall be made during reasonable hours with as little inconvenience to the Owner as practicable, and any damage caused thereby shall be repaired by the Board and such expenses shall be treated as a Common Expense; and entering any Lot for the purpose of correcting or abating any condition or situation deemed by the Board to be an emergency;

R. 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 either the Treasurer or the Assistant Treasurer of the Association, and countersigned by any Board member;

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

T. Exercising any other powers and duties reserved to the Association exercisable by the Board in the Declaration, the Articles of Incorporation or these Bylaws.

Section 5.14 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 project. The Board may delegate to such person, firm or entity (referred to in these Bylaws as "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 Nonprofit Corporation Act of North Carolina. The Independent Manager's contract shall be for a term not to exceed three (3) years, renewable by agreement between the Board and such Independent Manager for successive one-year terms; provided, however, that any such contract shall provide that it is terminable by the Association, with or without cause, upon not more than ninety (90) days' prior written notice and without payment of any penalty. The Board 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.

## **Section 6**

### **Committees**

Section 6.1 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 Project. Each committee so created shall have such authorities 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) member of the Board.

Section 6.2 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 6.3 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 6.4 Minutes: Each committee shall keep regular minutes of its proceedings and report the same to the Board when required.

Section 6.5 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 Board member may dissent from such action by filing his written objection with the Secretary with reasonable promptness after learning of such action.

## **Section 7**

### **Officers**

Section 7.1 Enumeration of Officers: The officers of the Association shall consist of a President, a Secretary, a Treasurer and such Vice Presidents, Assistant Secretaries, Assistant Treasurers and other officers as the Board may from time to time elect. Except for the President, no officer need be a member of the Board.

Section 7.2 Election and Term: The officers of the Association shall be elected annually by the Board. Such elections shall be held at the first meeting of the board next following the Annual or Substitute Annual Meeting of the Members. Each officer shall hold office until his death, resignation, removal or until his successor is elected and qualified.

Section 7.3 Removal: Any officer elected or appointed by the Board may be removed by the Board whenever in its judgment the best interest of the Association will be served thereby.

Section 7.4 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 7.5 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. Any officer may also be a member of the Board.

Section 7.6 President: The President shall be the chief executive officer of the Association and shall preside at all meetings of the Members. In the absence of an elected Chairman, he shall also preside at all meetings of the Board. He shall see that the orders and resolutions of the Board are carried out; he shall sign all written instruments regarding the Common Elements and co-sign all promissory notes of the Association, if any; and 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 7.7 Vice Presidents: The Vice Presidents in the order of their election, unless otherwise determined by the Board shall, in the absence or disability of the President, perform the duties and exercise the powers of that office. In addition, they shall perform such other duties and have such other powers as the Board shall prescribe.

Section 7.8 Secretary: The Secretary shall keep the minutes of all meetings of Members and of the Board; he shall have charge of such books and papers as the Board may direct; and he shall, in general, perform all duties incident to the Office of Secretary of a corporation organized under Chapter 55A of the General Statutes of North Carolina.

Section 7.9 Treasurer: The Treasurer shall have the responsibility for the Association's funds and securities and shall be responsible for keeping full and accurate financial records and books of account showing all receipts and disbursements, and for the preparation of all required financial statements. He shall co-sign promissory notes of the Association; he shall prepare a proposed annual budget (to be approved by the Board) and the other reports to be furnished to the Members as required in the Declaration. He shall perform all duties incident to the office of Treasurer of a corporation organized under Chapter 55A of the General Statutes of North Carolina.

Section 7.10 Assistant Secretaries and Treasurers: The Assistant Secretaries and Treasurers shall, in the absence or disability of the Secretary or the Treasurer, respectively, perform the duties and exercise the powers of those offices, and they shall, in general, perform such other duties as shall be assigned to them by the Secretary or the Treasurer, respectively, or by the President or the Board.

Section 7.11 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, compensate any officer or officers who render unusual and

extraordinary services to the Association beyond that called for to be rendered by such person or persons on a regular basis. Each officer, by assuming office, waives his right to institute suit against or make claim upon the Association for compensation based upon quantum meruit.

Section 7.12 Indemnification: To the extent permitted by the provisions of the North Carolina Nonprofit Corporation Act in effect at the applicable times, each officer is hereby indemnified by the Association with respect to any liability and expense of litigation arising out of his activities as an officer. Such indemnity shall be subject to approval by the Members only when such approval is required by said Act.

## Section 8

### Operation of the Property

Section 8.1 Determination of Common Expenses and Fixing of the Common Charges: The Board shall from time to time, and at least annually, prepare and adopt a proposed budget for the Project, determine the amount of the Common Expenses payable by the Owners to meet the proposed budget of the Project, and allocate and assess such proposed Common Expenses among the Owners in manner provided in Section 5.8 of the Declaration, all in accordance with the procedure set forth in this Section 8, but subject to the limitations set forth in Article XIV of the Declaration. The Common Expenses shall include, among other things, the cost of all insurance premiums on all policies of insurance required to be or which have been obtained by the Board pursuant to the provisions of the Declaration. The Common Expenses shall also include such amounts as the Board deems necessary for the operation and maintenance of the Property, including without limitation, an amount for working capital of the Project; an amount for a general operating reserve; an amount for a reserve fund for losses due to insurance deductibles; an amount for a reserve fund for repair and replacement of the Common Elements; and such amounts as may be necessary to make up any deficit in the Common Expenses for any prior year. Within thirty (30) days after adoption of any proposed budget for the Project, the Board shall provide a summary of the budget to all the Owners, and shall set a date for a meeting of the Owners to consider ratification of the budget no less than ten (10) nor more than sixty (60) days after mailing of the summary. Notwithstanding any other provisions of these Bylaws, there shall be no requirement that a quorum be present at such meeting. Notwithstanding any other provision of these Bylaws, the proposed budget shall be deemed ratified unless at that Meeting a majority of all the Owners present and entitled to cast a vote reject the budget. In the event the proposed budget is rejected, the periodic budget last ratified shall be continued until such time as the Owners ratify a subsequent budget proposed by the Board.

The Association, acting through the Board, may levy a special assessment during any calendar year for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of any capital improvement comprising or to comprise a portion of the Common Elements, including fixtures and personal property; provided, however, that any such special assessment must be approved by the vote of Owners of Lots to which at least sixty-seven percent (67%) of the votes in the Association are allocated cast in person or by proxy at a meeting duly held in accordance with the provisions of these Bylaws.



Declarant, as the agent of the Association, shall collect from each initial purchaser of a Lot at the time of closing an "initial capital assessment" equal to twice the estimated monthly assessment for Common Expenses. Such funds shall not be considered advance payments of assessments. Declarant will deliver the funds so collected to the Association to provide the necessary working capital for the Association. Such funds may be used for certain prepaid items, initial equipment and supplies, organizational expenses and other start-up costs, and for such other purposes as the Board may determine. Except for the permitted reimbursement of prepaid contributions referred to above, Declarant may not use the working capital fund to defray any of Declarant's expenses, reserve contributions, or construction costs, or to make up any budget deficits of the Association.

Section 8.2 Payment of Common Expenses: All Owners shall be obligated to pay the Common Expenses assessed by the Board pursuant to the provisions of Section 8.1 hereof at such time or times as the Board shall determine.

No 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. A purchaser of a Lot shall be jointly and severally liable with the seller for the payment of Common Expenses assessed against such Lot prior to the acquisition by the purchaser of such Lot without prejudice to the purchaser's rights to recover from the seller the amounts paid by the purchaser therefor.

Section 8.3 Collection of Assessments: The Board shall assess Common Expenses against the Lots from time to time and at least monthly in accordance with the allocations set forth in the Declaration. The Board shall take prompt action to collect any Common Expenses which remain unpaid for more than thirty (30) days from the due date for payment thereof.

The Board shall notify the holder of the Mortgage on any Lot (of which it has notice) for which any Common Expenses assessed pursuant to these Bylaws remain unpaid for more than thirty (30) days from the due date for payment thereof and in any other case where the Owner of such Lot is in default with respect to the performance of any other obligation hereunder for a period in excess of thirty (30) days.

Section 8.4 Default in Payment of Common Expenses; Remedies: In the event of default by any Owner in paying to the Board the Common Expenses as determined by the Board, such Owner shall be obligated to pay interest on such Common Expenses from the due date thereof at the rate of eighteen percent (18%) per annum, together with all expenses, including reasonable attorney's fees (if permitted by law), incurred by the Board in any proceeding brought to collect such unpaid Common Expenses. In addition, the Board shall have the authority to levy a late charge on any assessment not paid within fifteen (15) days after its due date, in the amount of four percent (4%) of the overdue assessment.

The Board shall have the right and duty to attempt to recover such Common Expenses, together with interest thereon, and the expenses of the proceedings, including reasonable attorneys' fees (if permitted by law), in an action to recover a money judgment for the same

brought against such Owner, or by foreclosure of the lien on such Lot in the manner specified in N.C.G.S. §47F-3-116.

In the event of the failure of an Owner to pay any assessment imposed hereunder, or any installment thereof, for more than sixty (60) days after such assessment or installment thereof shall become due, in addition to the other remedies available under the Project Documents or the North Carolina Planned Community Act, the Board shall have the right to declare all other Common Expense assessments, and installments thereof, with respect to such Owner's Lot that are to fall due during the then current fiscal year of the Association to be immediately due and payable.

Section 8.5 Lien and Personal Obligations: All Common Expenses provided for in this Article, together with the interest and expenses, including reasonable attorneys' fees (if permitted by law), as provided for herein, shall be a charge on and a continuing lien upon the Lot against which the assessment is made, which such lien shall be prior to all other liens excepting only (i) assessments, liens and charges for real estate taxes due and unpaid on the Lot and (ii) all sums unpaid on Mortgages and other liens and encumbrances duly recorded against the Lot prior to the docketing of such lien. Such lien shall become effective when a notice thereof has been filed in the office of the Clerk of Superior Court for Union County, North Carolina, provided such notice of lien shall not be recorded until such sums assessed remain unpaid for a period of more than thirty (30) days after the same shall become due. Such notice of lien shall also secure all assessments against the Lot becoming due thereafter until the lien has been satisfied.

The lien for unpaid assessments shall not be affected by the sale or transfer of the Lot, except in the case of a foreclosure of a Mortgage, in which event the purchaser at foreclosure shall not be liable for any assessments against such Lot that became due prior to the date of acquisition of title by such purchaser. Such unpaid assessments shall be deemed Common Expenses collectible from all Owners of Lots, including the purchaser at foreclosure. In addition, each Owner shall be personally liable for any assessment against his Lot. No Owner may exempt himself from such liability by non-use or enjoyment of any portion of the Common Elements or by the abandonment or sale of his Lot.

Section 8.6 Foreclosure of Liens for Unpaid Common Expenses: In any action brought by the Board to foreclose on a Lot because of unpaid Common Expenses, the 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.

Section 8.7 Abatement and Enforcement of Violations by Owners: The violation of any rule or regulation adopted by the Board or 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 the Declaration, these Bylaws, the North Carolina Planned Community Act, or at law or in equity: (a) to enter the Lot in which or as to which such violation or breach exists and to summarily abate and remove, at the expense of the defaulting Owner, any structure, thing or condition that 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; provided, however, that the Board shall be obligated to institute judicial proceedings before any item of construction can be altered or demolished; or (b) to enjoin, abate or remedy by appropriate legal proceedings,

either at law or in equity, the continuance of any such breach at the expense of the defaulting Owner.

Section 8.8 Maintenance and Repair: (a) Except as is specifically provided in the Declaration, all maintenance and any repairs to any Lot, whether ordinary or extraordinary, shall be made by the Owner of such Lot. Each Owner shall be responsible for all damages to any and all other Lots and/or to the Common Elements that his failure to do so may engender; and (b) except as is specifically provided in the Declaration, all maintenance, repairs and replacements to the Common Elements (unless necessitated by the negligence, misuse or neglect of an Owner, in which case such expense shall be charged to and paid by such Owner), shall be made by the Board; provided, however, there is excluded from the provisions contained in this section any repairs necessitated by casualty insured against by the Board to the extent the Board receives insurance proceeds for such repairs.

Section 8.9 Additions, Alterations or Improvements by Owners: No Owner shall make any structural addition, alteration, or improvement in or to his Unit or Lot, or to any Common Elements, or any change in the exterior appearance thereof, except in accordance with the terms of the Declaration.

Section 8.10 Use of Common Elements: An Owner shall not interfere with the use of the Common Elements by the remaining Owners and their employees, families, and invitees.

Section 8.11 Right of Access: An Owner shall grant a right of access to his Lot to the Independent Manager and/or any other person authorized by the Board or the Independent Manager for the purpose of making inspections, or for the purpose of correcting any condition originating in his Lot and threatening another Lot or the Common Elements, or for the purpose of performing installations, alterations or repairs to the mechanical or electrical equipment or other Common Elements, or for the purpose of performing installations, alterations or repairs to the mechanical or electrical equipment or other Common Elements in or adjoining his Lot; provided, however, such requests for entry (except in the case of emergencies where no request shall be required) are made in advance and any such entry is at a time reasonably convenient to the Owner. In the case of an emergency, such right of entry shall be immediate whether the Owner is present at the time or not.

Section 8.12 Rules of Conduct: Rules and regulations concerning the use of the Lots and the Common Elements shall be promulgated and amended by the Board in the manner provided in the Declaration. Copies of such rules and regulations shall be furnished by the Board to each Owner prior to the time when the same shall become effective.

Section 8.13 Common Expenses for Utilities: Any utilities which may be provided to the Lots through a common meter or facility, and utilities furnished to any portion of the Common Elements, shall be paid by each Owner as and when billed according to the extent of such Owner's use or, at the option of the Board, such may be paid by the Board and assessed against the Lots as a Common Expense.

## Section 9

### Amendments

Subject to the provisions of Article XIV of the Declaration, these Bylaws may be amended at any time by an instrument in writing signed and acknowledged by Owners holding at least sixty-seven percent (67%) of the votes in the Association, which instrument shall be effective only upon recordation in the Office of the Register of Deeds of Union County, North Carolina. Provided, however, where a larger vote in the Association is required for the Association to take or refrain from taking a specific action, as set forth in the Project Documents, no amendment of these Bylaws shall be made unless and until the Owners holding such larger percentage of the vote in the Association execute said amending instrument. All persons or entities who own or hereafter acquire any interest in the Property shall be bound to abide by any amendment to these Bylaws which is duly passed, signed, acknowledged and recorded as provided herein. No amendment to these Bylaws shall be adopted or passed which shall impair or prejudice the rights and priorities of any Mortgagee without the consent of such Mortgagee. No amendment to these Bylaws shall be adopted or passed which shall impair or prejudice the rights of Declarant provided for in the Project Documents, without the consent of Declarant.

## Section 10

### Miscellaneous

**Section 10.1 Severability:** Invalidation of any covenant, condition, restriction or other provisions of the Declaration or these Bylaws shall not affect the validity of the remaining portions thereof which shall remain in full force and effect.

**Section 10.2 Successors Bound:** The rights, privileges, duties and responsibilities set forth in the Project Documents, as amended from time to time, shall run with the ownership of the Property and shall be binding upon all persons who own or hereafter acquire any interest in the Property.

**Section 10.3 Gender, Singular, Plural:** Whenever the context so permits, the use of the singular or plural shall be interchangeable in meaning and the use of any gender shall be deemed to include all genders.

**Section 10.4 Nonprofit Corporation:** No part of the Association's assets or net income shall inure to the benefit of any of the Members, the officers of the Association, or the members of the Board, or any other private individual either during its existence or upon dissolution except as reasonable compensation paid or distributions made in carrying out its declared nonprofit purposes as set forth in the Articles of Incorporation of the Association and these Bylaws.

BK4410PG0521

FILED  
UNION COUNTY  
CRYSTAL CRUMP  
REGISTER OF DEEDS

FILED Dec 22, 2006  
AT 03:40 pm  
BOOK 04410  
START PAGE 0521  
END PAGE 0524  
INSTRUMENT # 59167  
EXCISE TAX (None)

S/MC

CONSENT AND SUBORDINATION  
TO DECLARATION OF COVENANTS, CONDITIONS  
AND RESTRICTIONS FOR FIELDSTONE

**WHEREAS, BANK OF AMERICA, N.A.**, a national banking association organized and existing under the laws of the United States, having its principal place of business in Charlotte, North Carolina ("Lender") is the beneficiary under that certain Deed of Trust and Security Agreement dated May 6, 2005 executed and delivered by **FIELDSTONE AT MONROE, LLC**, a North Carolina limited liability company ("Declarant") to **PRIAP, INC.**, as Trustee for Lender, and recorded in Book 3771 at Page 832 in the Union County Public Registry, as subsequently amended (the "Deed of Trust"), and Lender is also the owner and holder of the promissory note(s) secured by the Deed of Trust.

**WHEREAS**, Lender and Trustee have agreed to consent to the execution, delivery and recording by Declarant of the Declaration of Covenants, Conditions and Restrictions for Fieldstone (the "Declaration"), dated December 22, 2006 and recorded in the Union County Public Registry immediately prior to this Consent and Subordination, which Declaration subjects certain real property more particularly described in the Declaration and in the Deed of Trust (the "Property") to the easements, covenants, conditions and restrictions set forth therein, in accordance with the terms of the Declaration and the North Carolina Planned Community Act; and

**WHEREAS**, Lender and Trustee have agreed to subordinate the lien of the Deed of Trust to the Declaration, as provided below;

**NOW, THEREFORE**, for and in consideration of the above premises, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Lender and Trustee hereby: (a) consent to the execution, delivery and recording by Declarant of the Declaration, and (b) agree that the Deed of Trust, the liens created thereby and Lender's interest in the Property by virtue of the Deed of Trust, are and shall be subject and subordinate to terms and conditions of the Declaration, and to the easements, covenants, conditions and

C-1016710v1 13735.00093

Drawn By and Return To:  
Robinson, Bradshaw & Hinson, P.A.  
Attention: Erin P. Snyder  
101 N. Tryon Street, Suite 1900  
Charlotte, NC 28246

restrictions created thereby. In the event of a foreclosure of the Deed of Trust, or a transfer of any portion of the Property in lieu of foreclosure, Lender and Trustee agree that the purchaser at any such foreclosure, or the transferee under any such deed in lieu of foreclosure shall take title to such property subject to all of the terms and conditions of the Declaration. Notwithstanding the preceding to the contrary: (i) the lien of the Deed of Trust shall nevertheless remain superior to any and all liens now or subsequently created under the Declaration; and (ii) Lender shall, without further notice to the Association, be deemed to be a "Mortgagee" as described in the Declaration.

The execution of this Consent and Subordination by Lender shall not be deemed or construed to have the effect of creating between Lender and Declarant the relationship of partnership or of joint venture, nor shall it be deemed to impose upon Lender any of the liabilities, duties or obligations of Declarant under the Declaration. Lender executes, and Trustee joins in the execution of, this Consent and Subordination solely for the purposes set forth above.

[SIGNATURES BEGIN ON THE FOLLOWING PAGE]

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0523

BK4410PG0523

IN WITNESS WHEREOF, Trustee and Lender (by and through their duly authorized officers) have executed and delivered this instrument the day and year first above written.

**TRUSTEE:**

PRLAP, INC.,  
a North Carolina corporation

By: Belinda L. Austin  
Belinda L. Austin, Vice President

**LENDER:**

BANK OF AMERICA, N.A., a national banking  
association

By: Belinda L. Austin  
Belinda L. Austin, Vice President

4410-  
0524.

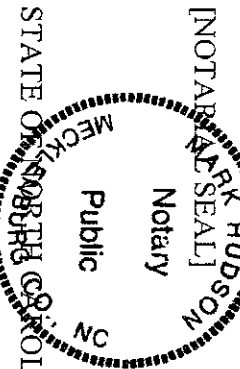
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STATE OF NORTH CAROLINA

COUNTY OF Mecklenburg

I, Mark Hudson, a Notary Public in and for said County and State, do hereby certify that Belinda L. Austin personally appeared before me this day and acknowledged that she is Vice President of PRLAP, Inc., a North Carolina corporation, and that by authority duly given and as the act of the corporation, the due execution of the foregoing instrument was signed by him/her in that capacity. Witness my hand and notarial seal this December 22, 2006.

[NOTARIAL SEAL]

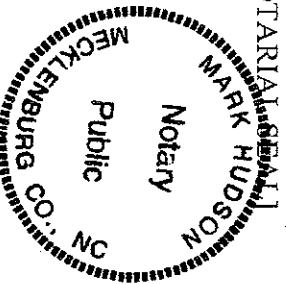


COUNTY OF Mecklenburg

Mark Hudson  
Notary Public  
My commission expires: Feb 13 2010

I, a Notary Public of the County and State aforesaid, certify that Belinda L. Austin personally came before me this day and acknowledged that she is Vice President of BANK OF AMERICA, N.A., and that by authority duly given and as the act of the corporation, the foregoing instrument was signed by him/her in that capacity. Witness my hand and notarial seal this December 22, 2006.

[NOTARIAL SEAL]



Mark Hudson  
Notary Public  
My commission expires: Feb 13 2010