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FILED
UNION COUNTY
CRYSTAL CRUMP
REGISTER OF DEEDS

FILED Oct 18, 2006
AT 11:19 am
BOOK 04336
START PAGE 0616
END PAGE 0643
INSTRUMENT # 48206
EXCISE TAX (None)
SVC

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NORTH CAROLINA

DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS FOR
VINTAGE TOWNHOMES PHASE III

UNION COUNTY

THIS DECLARATION, made on this 18th day of October, 2006, by THE
MATHISEN COMPANY, a North Carolina corporation, hereinafter referred to as the
"Declarant".

WITNESSETH:

THAT WHEREAS, the Declarant is the owner of certain Real Estate lying within Union
County, North Carolina, more particularly described in attached Exhibit A; and

WHEREAS, Declarant will convey all or portions of the Real Estate described on Exhibit
A and such Additional Properties as may be annexed to the Planned Community created
hereunder pursuant to Sections 4.1 and 4.2, below, subject to certain declarations, conditions,
restrictions, reservations, liens and charges as hereinafter set forth;

NOW, THEREFORE, Declarant hereby declares that all of the Real Estate described as
follows:

BEING all property shown and designated in Block 1 on Final Plat of Vintage
Townhomes, Phase III, Map 1, recorded in Plat Cabinet J, File Nos. 582-583, in
the office of the Register of Deeds for Union County, North Carolina, reference to
said plat or map being hereby made for a more particular description.

and such Additional Properties as may be annexed to the Planned Community created hereunder pursuant to Sections 4.1 and 4.2, below, shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions, all of which are for the purpose of enhancing and protecting the value, desirability, and attractiveness of the Planned Community. These easements, covenants, restrictions, and conditions shall run with the Real Estate and shall be binding on all parties having or acquiring any right, title or interest in the Real Estate or any part thereof, and shall inure to the benefit of each Lot Owner thereof.

1. **DEFINITIONS.** Any terms used herein which are defined in N.C.G.S. § 47F-1-103 shall have the meanings ascribed to them in said statute where the sense requires. In addition, the following terms shall have the following definitions throughout this Declaration:

1.1. "Act" shall mean the North Carolina Planned Community Act as contained in Chapter 47F of the North Carolina General Statutes.

1.2. "Additional Properties" shall mean all or any portion of such additional Real Estate as may be annexed to this Declaration in accordance with its terms.

1.3. "Amenities" means the facilities, if any, constructed, erected or installed on the Common Elements.

1.4. "Association" shall mean to Village Townhomes Phase III Homeowners Association, Inc., its successors and assigns.

1.5. "Building" means a multi-unit residential structure, constructed or erected on Lots within the Planned Community.

1.6. "Common Elements" shall mean all Real Estate owned by the Association and the easements granted thereto for the common use and enjoyment of the Lot Owners. The Common Elements to be owned by the Association shall be described in deeds to the Association and designated as such on each recorded map of the Real Estate.

1.7. "Common Expenses" means:

- (a) All sums lawfully assessed by the Association against its Members;
- (b) Expenses of administration, lighting, landscaping, maintenance, repair or replacement of the Common Elements;
- (c) Expenses declared to be Common Expenses by the provisions of this Declaration or the Bylaws;
- (d) Expenses agreed by the Members to be Common Expenses of the Association;

- (e) Expenses for exterior maintenance of the Townhomes as provided in this Declaration, water and sewer charges, lawn care, including irrigation, garbage disposal, pest control, gutter cleaning and other services provided to the Lot owners through the Association;
 - (f) Hazard, liability or such other insurance premiums as the Declaration or the Bylaws may require the Association to purchase;
 - (g) Ad valorem taxes and public assessment charges lawfully levied against Common Elements; and
 - (h) Accounting, legal and other professional services, including professional management, retained by the Association; and
 - (i) Unpaid assessments resulting from the purchase of a Lot at a foreclosure sale (such assessment shall be collectible from all members of the Association, including the purchaser at the foreclosure sale, his successors and assigns).
- 1.8. "Common Expense Liability" means the liability for Common Expenses allocated to each Lot as permitted by the Act, the Declaration or otherwise by law.
- 1.9. "Declarant" shall mean and refer to THE MATHISEN COMPANY, a North Carolina corporation, its successors and assigns, if such successors or assigns should acquire more than one undeveloped Lot plus the Declarant's Special Declarant rights from the Declarant for the purpose of development.
- 1.10. "Declaration" means this Declaration of Covenants, Conditions and Restrictions
- 1.11. "Director" means any person elected or appointed to the Executive Board.
- 1.12. "Executive Board" means those persons elected or appointed and acting collectively as the Directors of the Association.
- 1.13. "Limited Common Elements" shall mean any portion of the Common Elements allocated by this Declaration or by operation of law for the exclusive use of one or more, but fewer than all, of the Lots and the respective Lot Owner(s) of such Lots(s).
- 1.14. "Lot" shall mean any physical portion of the Real Estate within the Planned Community designated for separate ownership or occupancy by a Lot Owner.
- 1.15. "Lot in Use" shall mean any Lot owned by any person other than Declarant.
- 1.16. "Lot Owner" shall mean the record owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the Planned Community, including

contract sellers, but excluding those having such interest merely as security for the performance of an obligation. All Lot Owners shall be Members, as that term is defined herein, and the terms Lot Owner and Member may be used hereafter interchangeably where the sense requires.

1.17. "Member" shall mean and refer to every person or entity who holds membership in the Association. There shall be two classes of voting membership in the Association. All Members shall be Lot Owners, as that term is defined herein, and the terms Member and Lot Owner may be used hereafter interchangeably where the sense requires.

A. "Class A Members" shall be all those Lot Owners as defined in Article III herein, with the exception of the Declarant. Declarant may, however, be a Class A member upon termination of Class B membership.

B. "Class B Member" shall be the Declarant as defined herein.

1.18. "Person" means any individual, corporation, partnership, Limited Liability Company, association, trustee, or other legal entity.

1.19. "Planned Community" shall mean that Real Estate development to be named VINTAGE TOWNHOMES PHASE III to be developed on that certain Real Estate described herein and on such Additional Properties as may be hereafter annexed to this Declaration and brought within the jurisdiction of the Association in accordance with the terms and conditions hereof.

1.20. "Special Declarant Rights" shall have the same meaning as defined in the Act, and, without limiting the foregoing, shall include those rights reserved unto the Declarant under this Declaration, the Association's Articles of Incorporation and the Association's Bylaws.

1.21. "Townhome" means a dwelling or place of residence constructed upon a Lot within the Planned Community and constituting a part of a Building,

2. PROPERTY RIGHTS.

2.1. Title to Common Elements. The Declarant shall convey fee simple title in the Common Elements to the Association, subject to this Declaration, current and subsequent years ad valorem taxes, and rights-of-way, restrictive covenants and easements of record. Conveyance of title to the Common Elements to the Association shall be done promptly after the recording of the plat reflecting that particular Common Elements and, in any event, prior to the sale by the Declarant of the first Lot included in that plat.

2.2. Lot Owners' Easement of Enjoyment. Every Lot Owner shall have a right and easement of use and enjoyment in and to the Common Elements (the "Lot Owners' Easement"), including specifically an easement for access, ingress and egress from and to public streets,

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private streets, common parking, and walkways. The Lot Owners' Easement shall be appurtenant to and shall pass with the title to every Lot subject to the following provisions:

A. Conveyance or Encumbrance of Common Elements: Subject to all applicable governmental ordinances, the Association's right to convey or encumber by mortgage or deed of trust title to all or any part of the Common Elements in compliance with N.C.G.S. §47F-3-112. In addition to the statutory requirement that any such conveyance or encumbrance of the Common Elements be approved by 80% of the votes in the Association, no such conveyance or encumbrance shall be effective unless an instrument signed by at least 67% of each Class of Members agreeing to the conveyance or encumbrance has been recorded in the appropriate County Registry. In addition, any conveyance or encumbrance of all or any portion of a Limited Common Element must be agreed to in writing by all Lot Owners to which such Limited Common Element is allocated. Any conveyance or encumbrance shall be made subject to that portion of the Lot Owners' Easement providing for access, ingress and egress to public streets, private streets, parking, and walkways.

B. Borrowing for Improvements: The Association's right, in accordance with its Articles and Bylaws, to borrow money for the purpose of improving the Common Elements and facilities and to mortgage those properties to secure those borrowings in accordance with 2.2A, above, provided the mortgage is subordinate to the Lot Owners' Easement.

C. Rules and Regulations: The Association's right to impose and enforce rules and regulations which may restrict the use and enjoyment of the Common Elements and/or Amenities.

D. Additional Easements: The Association and the Declarant shall have the authority to grant and/or establish upon, over, under and across the Common Elements further easements (including, but not limited to those provided in this Declaration) as are required for the convenient use and enjoyment of the Planned Community.

E. Admission and Other Fees: Subject to all applicable governmental ordinances, the right of the Association to charge reasonable admission and other fees for the use of any Amenities.

F. Suspension of Privileges or Services: The right of the Association as provided in this Declaration or in the Act to suspend privileges or services of any Lot Owner who violates the terms and conditions of this Declaration, the Association's Bylaws or Rules or Regulations adopted by the Association.

2.3. Parking Rights: Each Lot Owner and its guests, in common with the other Lot Owners and their guests, shall be entitled to the exclusive use of the automobile parking space(s) assigned to such Lot Owners' Lot(s) located within the Common Elements, together with the right of ingress and egress in and to those parking space(s). The Declarant or Association reserves the right to permanently assign parking spaces for each Townhome. Subject to all

applicable governmental ordinances and approval of any municipal authority having jurisdiction over parking within the Real Estate, for so long as it holds Class B Membership, Declarant reserves the right to establish additional areas of parking within the Common Elements as Declarant, in its discretion, may determine are needed.

2.4. Delegation of Use. Any Lot Owner may delegate, in accordance with the Bylaws, his right of enjoyment to the Common Elements and facilities to his members of his family and tenants who reside at his Lot and to his guests.

2.5 Use of Limited Common Elements Restricted. Access, use and enjoyment of areas within the Planned Community designated as Limited Common Elements or *LCE* shall be restricted to those Lot Owners for whom the Limited Common Elements were designed to exclusively benefit. Areas contiguous to Lots containing Townhome dwelling units and garage units were and shall be designed to exclusively benefit the Lot Owners and/or garage Lot Owners abutting the entrances to such Townhome dwelling units and /or garage units.

3. MEMBERSHIP AND VOTING RIGHTS.

3.1. Lot Ownership of a Lot shall be the sole qualification for membership in the Association. The Association's Board may make reasonable rules relating to the proof of Lot Ownership of a Lot. Membership shall be apportioned to and may not be separated from Lot Ownership of any Lot.

3.2. The Association shall have two classes of voting membership:

(a) Class A Members shall be all Lot Owners with the exception of the Declarant. Declarant may, however, be a Class A Member upon the termination of Class B Membership. Class A Members shall be entitled to one (1) vote for each Lot owned. When more than one Person holds an interest in any one Lot, all such Persons shall be Members. The vote of that Lot shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any Lot. Fractional voting is prohibited.

(b) The Class B Member shall be the Declarant. Class B Members shall be entitled to three (3) votes for each Lot owned. The Class B Membership shall cease and be converted to Class A Membership upon the earlier of:

(i) the date the total votes outstanding in the Class A Membership equal the total votes outstanding in the Class B Membership; provided that the Class B Membership shall be reinstated with all rights, privileges, responsibilities and voting power if, after conversion of the Class B Membership to Class A Membership, additional lands are annexed to the Planned Community by the Declarant as provided in the Declaration; or

- (ii) December 31, 2016; or
- (iii) the effective date of the Declarant's written consent to termination.
- (c) The Declarant's rights as a Class B Member are Special Declarant Rights which may be transferred (as may all Special Declarant Rights) in the manner prescribed by N.C.G.S. § 47F-3-104.

4. ANNEXATION OF ADDITIONAL PROPERTIES.

4.1. Annexation by Members: Except as provided in 4.2, Additional Properties may be added and annexed to the Planned Community only if 67% of each class of all the votes entitled to vote be cast in such class by Members are cast in favor of annexation.

4.2. Annexation by Declarant : Prior to December 31, 2015, the Declarant may, from time to time, annex Additional Properties, including any or all of the real property described on Exhibit A attached hereto, to the Planned Community without the consent of the Members, or other property if the Declarant should develop an additional tract or tracts of Real Estate contiguous to or within close proximity of the Planned Community. The annexation will be accomplished by recording with the office of the Register of Deeds for the County in which the Planned Community is located, a Supplementary Declaration, approved by any local or municipal authority having jurisdiction thereof, if required, duly executed by Declarant, describing the Additional Properties annexed and incorporating the provisions of this Declaration. No other action or consent shall be necessary. Subsequent to recordation of the Supplementary Declaration, the Declarant shall deliver to the Association one or more deeds conveying any Real Estate that will be designated as Common Elements within the Additional Properties as such Additional Properties are developed. Title to these Common Elements shall be conveyed subject to the same exceptions noted in Section 2. 1. Upon annexation, the Additional Properties shall be deemed part of the Planned Community and shall be subject to this Declaration.

4.3. Additional Special Declarant Rights. Subject to all applicable governmental ordinances, as long as Class B membership exists, the Declarant reserves the following development rights(which shall be deemed Special Declarant Rights, as defined herein and in the Act): (i) to add Real Estate to the Planned Community in accordance with Section 4.2 of this Declaration; (ii) to add Common Elements; (iii) to designate portions of the Common Elements as Limited Common Elements; (iv) to reallocate and reconfigure Lots within the Planned Community; and (v) prior to a conveyance of all or any portion of the Real Estate made subject to this Declaration to a Lot Owner, to withdraw all or any portion of such Real Estate from the Planned Community.

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5. COVENANT FOR MAINTENANCE ASSESSMENTS.

5.1. Lien of Assessments:

5.1.1. The Declarant, for each Lot, covenants, and each Lot Owner of any Lot by acceptance of a deed therefore (whether or not it shall be so expressed in such deed) is deemed to covenant and agrees to pay the Association Annual Assessments, Special Assessments, and Initial Assessment, all as described below, (together the "Assessments"). The Association shall also have the authority, through the Association's Board, to establish, fix and levy an individual assessment on any Lot to secure the liability of that Lot Owner to the Association arising from Lot Owner's breach of any of the provisions of this Declaration.

5.1.2. The Assessments shall be set on a calendar year basis (the "Annual Assessment Period") by the Executive Board and may be collected on a monthly or yearly basis as determined by the Executive Board. Annual Assessments shall be charged to each Lot Owner of a Lot in Use. Special Assessments shall be charged to each Lot without regard as to whether or not it is a Lot in Use. Assessments, including fees, charges, late charges, fines, interest and other charges imposed by this Declaration or permitted under N.C.G.S. §§ 47F-3-102, 47F-3-107, 47F-3-107.1, 47F-3-115 and N.C.G.S. § 47F-3-116 shall, upon the filing of a claim of lien in the office(s) of the Clerk(s) of Superior Court for the county or counties within which the Planned Community is located in the manner prescribed by N.C.G.S. § 47F-3-116, be a lien on the applicable Lot continuing until paid in full, as well as a personal obligation of the Person who was the Lot Owner of the Lot at the time the Assessment became due. While any unpaid amounts shall remain a lien on the applicable Lot, the personal obligation shall not pass to that Lot Owner's successors in title unless expressly assumed by the successor(s).

5.2. Purpose of Assessments: The Assessments shall be used exclusively for the purposes of this Declaration as described in the Recitals, the payment of Common Expenses, the health, safety and welfare of the Lot Owners, and the improvement and maintenance of the Common Elements. The Association shall maintain a reserve fund for periodic maintenance and repair of the landscaping and exteriors of the Townhomes and for the maintenance, repair, and replacement of improvements to the Common Elements.

5.3. Annual Assessments:

5.3.1. On or before December 1st of each year preceding an Annual Assessment Period, the Association's Executive Board shall adopt the Budget (as defined below) for the upcoming Fiscal Year. The annual budget for the Association shall include all anticipated revenues (including revenues from Annual Assessments to be charged in the next Annual Assessment Period (the "Anticipated Annual Assessments") and anticipated costs for the Association for the upcoming Fiscal Year (together the "Budget"). Within thirty (30) days after adoption of any proposed Budget for the Planned Community, the Executive Board shall provide to all of the Lot Owners a summary of the Budget and a notice of the meeting to consider ratification of the budget, including a statement that the Budget may be ratified without a quorum. The Executive

Board shall set a date for a meeting of the Lot Owners to consider ratification of the Budget, such meeting to be held not less than ten (10) nor more than sixty (60) days after mailing of the summary and notice. A quorum need not be present at the meeting. The Budget shall be ratified unless at that meeting seventy-five (75%) percent of all Lot Owners reject the Budget. In the event the proposed Budget is rejected at that meeting, the Budget for the previous Annual Assessment Period shall be continued until a subsequent Budget proposed by the Executive Board is ratified by the Lot Owners in the manner set forth above and set forth in N.C.G.S. § 47F-3-103 (c). The Anticipated Annual Assessments for the approved Budget shall be the basis for calculating the Annual Assessment to be charged each Lot Owner for the upcoming Annual Assessment Period.

5.3.2. Notwithstanding the above to the contrary, until January 1 of the year immediately following the conveyance of the first Lot to a Lot Owner, the maximum Annual Assessment shall be \$ 1979.42 per lot, payable in monthly installments of \$ 165.78 per lot due the first day of each month.

5.3.3. As long as Declarant has a majority of the total votes, Declarant may loan the Association monies to the extent that Annual Assessments paid by the Lot Owners are inadequate. This advance shall be to the Association and on terms generally available to Declarant from its lending institution.

5.4. **Special Assessments:** In addition to the Annual Assessments, the Association may levy in any Annual Assessment Period a special assessment applicable to that Annual Assessment Period only (the "Special Assessment") for the purpose of defraying in whole or in part the cost of any expenditures (including capital improvements and Real Estate acquisition costs) not otherwise included in the Budget. A Special Assessment shall require the assent of two-thirds (2/3) of the votes of the Members who are voting in person or by proxy at a meeting duly called for this purpose.

5.5. **Initial Assessment:** The Declarant shall be entitled to levy and collect on behalf of the Association an initial capital contribution ("Initial Assessment") of \$ 500.00 with respect to each Lot payable at such time as any builder sells a Lot to its customer. The Initial Assessment shall be used to fund the operating expenses of the Association, and shall not be considered an advance against Assessments to become due on and after transfer of title to the Lot Owner. The Declarant may increase the Initial Assessment from time to time during the Declarant Control Period as a Special Declarant Right.

5.6. **Fines and Suspension of Privileges or Services:** In the event any Lot Owner should be in default for a period of thirty (30) days or longer with respect to the payment of any Assessment(s) due the Association under this Declaration, the Association may, after giving such Lot Owner notice and an opportunity to be heard, suspend privileges (including, but not limited to, such Lot Owner's rights to vote as a Member of the Association or to utilize any recreational amenities located within the Common Elements) or services (except rights of access to such Lot Owner's Lot) provided by the Association to such Lot Owner. In addition, in the event any Lot

Owner should violate any of the terms and conditions of the Declaration or of the Association's Bylaws or any Rules and Regulations adopted by the Association, the Association may, after giving such Lot Owner notice and an opportunity to be heard, impose a reasonable fine upon such Lot Owner or suspend privileges or services (except rights of access to such Lot Owner's Lot). Prior to imposing a fine upon any Lot Owner or suspending any privileges or services provided to such Lot Owner by the Association, the Executive Board shall give the Lot Owner notice of the charged violation, notice of a hearing and an opportunity to be heard and to present evidence at such hearing. Such hearing shall be scheduled before the Executive Board or an adjudicatory panel appointed by the Executive Board to hear such matters. Such adjudicatory panel shall be composed of Members who are not officers of the Association or members of the Executive Board. After rendering a decision, the adjudicatory panel or Executive Board, as the case may be, shall give the affected Lot Owner notice of its decision. The Lot Owner may appeal the decision of an adjudicatory panel appointed by the Executive Board by delivering written notice of appeal to the Executive Board within fifteen (15) days after the date of the decision. The Executive Board may affirm, vacate, or modify the prior decision of such adjudicatory panel. If it is decided that a fine should be imposed, a fine not to exceed One Hundred Dollars (\$100.00) may be imposed for the violation and, without further hearing, for each day more than five days after notice of the final decision is given to the Lot Owner that the violation continues to occur. Such fine(s) shall be Assessment(s) secured by liens under this Declaration and under N.C.G.S. §47F-3-116. If it is decided that a suspension of privileges or services should be imposed, the suspension may be continued without further hearing until the violation or delinquency is cured.

5.7. Uniform-Rate of Assessment. Both Annual Assessments and Special Assessments must be fixed at a uniform rate for all Lots in Use, as the case may be. Provided, however, that the Association shall also have the authority, through the Executive Board, to establish, fix and levy a Special Assessment on any Lot to secure the liability of that Lot Owner to the Association arising from that Lot Owner's breach of any of the provisions of this Declaration. As a matter of information, it is or may be a part of the plan of the development to construct a variety of Townhomes with a variety of exteriors for the good of the entire Planned Community. As a result, some Townhomes will require more maintenance than others because of the type of exterior exposures. Nevertheless, it is believed that all Members will be benefited by the variety of exteriors and therefore the Association should provide exterior maintenance and make a uniform rate of charge without regard to differences in the cost of maintenance of each Townhome. Similarly, the component of the Annual Assessments attributable to water and sewer charges will be based on a uniform rate of charge rather than on usage.

5.8. Date of Commencement of Annual Assessment/Due Dates. The Annual Assessments shall commence as to all then existing Lots in Use on the first day of the month following the conveyance of the Common Elements shown on the map(s) on which such Lots in Use are shown to the Association. Thereafter, the Annual Assessments shall commence as to a Lot on the first day of the month following the date it becomes a Lot in Use. The first Annual Assessment shall be adjusted according to the number of months remaining in the calendar year. Written notice of the Annual Assessment shall be sent to every Lot Owner subject thereto at least

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fifteen (15) days in advance of each Annual Assessment Period. The due date shall be established by the Executive Board. The Association shall, upon demand at any time, furnish a certificate in writing signed by an officer of the Association setting forth whether the Assessments on a specified Lot have been paid. A reasonable charge may be made by the Board for the issuance of these certificates. These certificates shall be conclusive evidence of payment of any Assessment as to third parties acting in reliance on the statement.

5.9. Non-Payment of Assessment; Remedies of the Association. Any Assessments levied against a Lot remaining unpaid for a period of thirty (30) days or longer shall constitute a lien on that Lot when a claim of lien is filed of record in the office of the Clerk of Superior Court for the County or Counties where the Lot is located. Fees, charges, late charges and other charges imposed and allowed pursuant to N.C.G.S. § 47F-3-102, 47F-3-107, 47-F-107.1, and 47F-3-115 shall, upon the filing of a claim of lien in the office(s) of the Clerk(s) of Superior Court for the county or counties within which the Planned Community is located in the manner prescribed by N.C.G.S. 47F-3-116, be a lien on the applicable Lot continuing until paid in full and shall be enforceable as Assessments. Except in cases where the Act requires that the Association enforce a lien for Assessments by judicial foreclosure in accordance with Article 29 A of Chapter 45 of the North Carolina General Statutes, the Association may foreclose a claim of lien for Assessments in like manner as a mortgage on real estate under power of sale under Article 2A of Chapter 45 of the North Carolina General Statutes. Each Lot Owner, by the acceptance of a deed to a Lot, expressly vests in the Association, its agents or assigns, the right and power to bring all actions against the Lot Owner personally liable for the collection of a debt and to enforce the lien by all methods available for the enforcement of such liens, including foreclosure by an action brought in the name of the Association in the manner permitted under the Act. Each Lot Owner also expressly grants to the Association a power of sale in connection with foreclosure of a lien for Assessments. The lien provided for in this Article shall be in favor of the Association, acting on behalf of the Lot Owners, which shall have the power to bid in at foreclosure and to acquire and hold, lease, mortgage and convey the foreclosed Lot. No Lot Owner may waive or otherwise escape liability for Assessments by non-use of the Common Elements or abandonment of this Lot.

5.10. Subordination of the Lien. The lien of the Assessments shall be subordinated to the lien of the first mortgage on a Lot. Except in those instances described below, the sale or transfer of a Lot shall not release or otherwise affect the lien of delinquent Assessments. Provided the Association is given prior written notice of such, the sale or transfer of a Lot pursuant to the foreclosure of a first mortgage or deed of trust or pursuant to a deed in lieu given in satisfaction of a first mortgage or deed of trust shall extinguish the lien of the delinquent Assessments for that Lot. In no event, however, shall a sale or transfer relieve the Lot from liability for any Assessments subsequently becoming due or from the lien thereof

5.11. Exempt Real Estate. All Lots dedicated to and accepted by a local public authority and the Common Elements shall be exempt from the Assessments.

6. INSURANCE.

6.1. Authority to Purchase Insurance. Insurance policies upon the Real Estate and improvements located within the Planned Community (except title insurance policies insuring Lot Owners and/or their Lenders) shall be purchased by the Association in the name of the Executive Board of the Association, as Trustees for the Lot Owners, for the benefit of the Lot Owners and their respective mortgagees as their interests may appear, and shall provide for the issuance of certificates or mortgage endorsements to the holders of first mortgages or deeds of trust on the Lots or any of them, and if the companies writing such policies will agree, the policies shall provide that the insurer waives its rights of subrogation as to any claims against Lot Owners, the Association and their respective servants, agents or guests.

6.2. Insurance Coverage to be maintained; Use and Distribution of Insurance Proceeds. The following insurance coverage shall be maintained in full force and effect by the Association covering the operation and management of the Lots and Common Elements:

6.2.1. Commencing not later than the time of the first conveyance of a Lot to a person other than the Declarant, the Association shall maintain:

- (a) Property insurance on the Common Elements insuring all risks of direct physical loss commonly insured against including fire and extended coverage perils. The total amount of such insurance after application of any deductibles shall not be less than eighty percent (80%) of the replacement costs of the insured property at the time the insurance is purchased and at each renewal date, exclusive of land, excavations, foundations and other items normally excluded from property policies; and
- (b) Liability insurance in reasonable amounts covering all occurrences commonly insured against for death, bodily injury and property damage arising out of or in connection with the use, ownership, or maintenance of the Common Elements.

6.2.2. Commencing not later than the first conveyance of a Lot containing a completed Townhome thereon, the Association shall maintain property insurance covering all Buildings located within the Planned Community which contain at least one completed Townhome and covering all other improvements to Lots on which all or part of a Building has been completed in an amount equal to one hundred (100%) percent of the insurance replacement costs of the insured property at the time the insurance is purchased and at each renewal date, exclusive of land, excavations, foundations and other items normally excluded from such property policies. If coverage is provided by an insurance policy in which there is a co-insurance clause applying, every effort will be made to obtain an agreed amount endorsement or its equivalent. Such coverage shall afford protection against: (a) loss or damage by fire and other hazards covered by the standard extended coverage endorsement; (b) such other risks as from time to time

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customarily shall be covered with respect to Buildings and other improvements similar in construction, location and use, including, but not limited to, vandalism and malicious mischief.

6.2.3. The following provisions apply to insurance coverage to be maintained by the Association pursuant to Sections 6.2.1 and 6.2.2, above:

(a) If any insurance described in Sections 6.2.1 and 6.2.2, above, is not available, the Association promptly shall cause notice of that fact to be hand-delivered or sent prepaid by United States mail to all Lot Owners.

(b) Insurance policies carried pursuant to Sections 6.2.1 and 6.2.2 shall provide that:

(1) Each Lot Owner is an insured person under the policy to the extent of such Lot Owner's insurable interest;

(2) The insurer waives its right to subrogation under the policy against any Lot Owner or member of the Lot Owner's household;

(3) No act or omission by any Lot Owner, unless acting within the scope of the Owner's authority on behalf of the Association, will preclude recovery under the policy; and

(4) If, at the time of a loss under the policy, there is other insurance in the name of a Lot owner covering the same risk covered by the policy, the Association's policy provides primary insurance coverage.

(c) Any loss covered by the property policies provided for in Sections 6.2.1 and 6.2.2 shall be adjusted with the Association, but the insurance proceeds for that loss are payable to any trustee designated by the Association for that purpose, or otherwise to the Association, and not to any mortgagee or beneficiary under a deed of trust. The insurance trustee or the Association shall hold any insurance proceeds in trust for Lot Owners and lienholders as their interests may appear. Subject only to the rights of first lienholders with respect to insurance proceeds for improvements not located within the Common Elements, property insurance proceeds shall be disbursed first for the repair or restoration of the damaged property, and Lot Owners and lienholders are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the property has been completely repaired or restored, or the Planned Community is terminated.

(d) An insurer that issued an insurance policy pursuant to Section 6.2.1 or Section 6.2.2 shall issue certificates or memoranda of insurance to the Association and upon request of any Lot Owner, contract purchaser of any Lot, or any mortgagee of a mortgage or any beneficiary under a deed of trust encumbering any Lot. The insurer issuing the policy may not cancel or refuse to renew it until thirty (30) days after notice of the

proposed cancellation or nonrenewal has been mailed to the Association, each Lot Owner and each mortgagee or beneficiary under a deed of trust to whom certificates or memoranda of insurance have been issued at their respective last known addresses.

(e) Subject only to the rights of first lienholders with respect to insurance proceeds for improvements not located within the Common Elements, any portion of the Planned Community for which insurance is required under Section 6.2.1 or Section 6.2.2, above, which is damaged or destroyed shall be repaired or replaced promptly by the Association unless (i) the Planned Community is terminated, (ii) repair or replacement would be illegal under any State or local health or safety statute or ordinance, or (iii) the Lot Owners decide by an eighty (80%) percent vote, including one hundred (100%) percent approval of the Lot Owners owning any portion of a damaged or destroyed Building not to be rebuilt and one hundred (100%) percent of Lot Owners assigned to any Limited Common Elements not to be rebuilt, repaired or restored. The cost of repair or replacement in excess of insurance proceeds and reserves is a Common Expense. If any portion of the Planned Community is not repaired or replaced, (i) the insurance proceeds attributable to the damaged Common Elements shall be used to restore the damaged area to a condition compatible with the remainder of the Planned Community, (ii) the insurance proceeds attributable to Buildings which are not rebuilt shall be distributed to the Lot Owners of the Lots upon which all or a portion of those Buildings were located, or to lienholders, taking into account the replacement costs of the respective losses suffered by the affected Lots, as their interests may appear, (iii) the insurance proceeds attributable to Limited Common Elements which are not rebuilt shall be distributed to the Lot Owners of the Lots to which those Limited Common Elements were allocated, or to lienholders, as their interests may appear, and (iv) the remainder of the proceeds shall be distributed to all of the Lot Owners or lien holders, as their interests may appear, in proportion to the Common Expense Liabilities of all the Lots. Notwithstanding the foregoing, in the event the Planned Community is terminated, the distribution of insurance proceeds shall be governed by N.C.G.S. § 47F-2-118.

6.2.4. Each Lot Owner shall at the time of acquiring title to a Lot in Use, and throughout his or her period of ownership of such Lot, obtain and maintain:

(a) Property insurance covering all of such Lot Owner's personal property located within the Planned Community, the policy or policies for which shall waive any rights of subrogation such Lot Owner's insurer has or may have against the Association or other Lot Owners for negligence resulting in loss of or to such personal property;

(b) Liability insurance in reasonable amounts covering all occurrences commonly insured against for death, bodily injury and property damage arising out of or in connection with the use, ownership, or maintenance of such Lot Owner's Lot, the policy or policies for which shall waive any rights of

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subrogation such Lot Owner's insurer has or may have against the Association or other Lot Owners.

6.2.5. Fidelity Coverage protecting against dishonest acts by Association officers, directors, trustees, and employees and all others who are responsible for handling funds of the Association in the amount of one year's operating budget, plus projected reserve balance during the budget year. If professional management is obtained by the Association and it has this coverage and it handles the funds, then this requirement will be satisfied.

6.2.6. In the event a mortgagee endorsement has been issued as to a Lot, the share of the Lot Owner shall be held for the mortgagee and the Lot Owner as their interest may appear, but no mortgagee shall have the right to participate in the determination of reconstruction or repair.

6.2.7. Each Lot Owner at his expense, may obtain such additional insurance coverage on his Lot, personal property and personal liability and any additional insurance shall contain waiver of subrogation clause.

6.2.8. Immediately after the casualty causing damage to property, the Association shall obtain reliable and detailed estimates of the cost to place the damaged real property in condition as good as that before the casualty. Such costs may include professional fees and premiums for such bonds as the Executive Board of the Association deems appropriate.

6.2.9. Each Lot Owner delegates to the Executive Board of the Association his right to adjust with insurance companies all losses under policies purchased by the Association.

6.3. Repair/Reconstruction.

6.3.1. Any reconstruction or repair of any improvements damaged by fire or other casualty shall be substantially in accordance with the original plans and specifications.

6.3.2. In the event of damage to any property covered by insurance written in the name of the Association, the Executive Board shall, with concurrence of the first mortgagee, if any, upon receipt of insurance proceeds resulting from losses resulting to areas other than the Common Elements, contract to rebuild or repair the damage to as good condition as formerly. In the event the insurance proceeds are insufficient to pay all of the costs of repairing and/or rebuilding to the same condition as formerly, the Executive Board shall, upon obtaining the required Member approval, levy a Special Assessment against all Members to make up any deficiency.

6.4. Premiums. Premiums for contracts of insurance purchased by the Association shall be paid by the Association and shall be a Common Expense.

6.5. Prohibited Acts. No Lot Owner shall do or keep anything within the Planned Community which shall cause an increase in the premiums for or the cancellation of any insurance maintained by the Association.

7. PARTY WALL.

7.1. General Rules of Law to Apply. Each wall which is built as a part of the original construction of a Building and placed on a dividing line between Lots and all reconstruction or extensions of such walls shall constitute party walls. To the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls, lateral support, in or below ground construction and of liability for property damage due to negligence or willful acts or omissions shall apply.

7.2. Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party wall shall be a Common Expense.

7.3. Destruction by Fire or Other Casualty. If a party wall is destroyed or damaged by fire or other casualty, the Association shall restore it. If the insurance proceeds shall be inadequate to cover the costs of reconstruction, the Association shall levy a Special Assessment to cover such shortfall from all Lot Owners, whether or not affected by the damage or destruction.

7.4. Construction or Reconstruction. The Association shall repair or reconstruct a party wall subject to and within the limitations of architectural control and other limitations of this Declaration with the right to go upon the adjoining Lot to the extent reasonably necessary to perform the construction. The construction shall be done expeditiously. Upon completion of the construction, the Association shall restore, as is reasonably practicable, the adjoining Lot to as near the same condition which prevailed on or before the commencement of the construction.

7.5. Weatherproofing. Notwithstanding any other provisions of this Article, a Lot Owner who, by his negligence or willful act, causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against those elements.

7.6. The Right to Contribution Runs with the Land. The right of any Lot Owner to contribution from any other Lot Owner under this Article shall be appurtenant to the land and shall pass to the Lot Owners' successors in title.

7.7. Contribution Certification by Adjoining Real Estate Lot Owner. If any Lot Owner desires to sell his Townhome, he may, in order to assure a prospective purchaser that no adjoining Lot Owner(s) has a right of contribution as provided in this Declaration, request that the adjoining Lot Owner(s) provide a certification that no right of contribution exists. It shall be the duty of each adjoining Lot Owner to make such certification immediately upon request and without charge; provided, however, that where the adjoining Lot Owner claims a right of contribution, the certification shall contain a recital of the amount claimed. In the event an adjoining Lot Owner refuses or neglects to provide such certification, it shall be deemed a waiver

to proceed against such Lot Owner or his successors for any contributions which may have accrued to that date.

8. EXTERIOR MAINTENANCE.

8.1. Maintenance Responsibility. In addition to maintenance of the Common Elements, the Association shall provide exterior maintenance for each Lot in Use, which shall be a Common Expense, as follows: Paint, repair and replace exterior Building surfaces, roofs, gutters and downspouts; maintenance of trees, shrubs, grass, walks, and driveways within the Lots (excluding rear yards within enclosed fenced areas maintained by the respective Lot Owners) and the Common Elements; and maintenance of all other exterior Improvements initially installed by Declarant. This exterior maintenance shall not include any maintenance specifically designated as the Lot Owner's responsibility elsewhere in this Declaration. In order to enable the Association to accomplish the foregoing, it is reserved to the Association the right to unobstructed access over and upon each Lot and each Townhome at all reasonable times to perform maintenance as provided in this section. The Lot Owner shall not place any furniture, place or construct any Improvements, or plant any vegetation in the front yard or, except with the prior approval required by Article 11, outside enclosed fenced areas in the rear yard of a Lot. After receiving the required approval, the Lot Owner may plant flowers and grass outside enclosed fenced areas in his rear yard and may also maintain portions or all of his rear yard, provided that such maintenance by the Lot Owner does not hinder the Association in performing its exterior maintenance obligations. In that event, the Lot Owner shall maintain such plantings or other maintenance. No such maintenance by a Lot Owner shall reduce the assessment payable by him to the Association. If, in the opinion of the Association, any Lot Owner fails to maintain his rear yard in a neat and orderly manner, the Association may perform the required maintenance and assess Lot Owner for those costs.

8.2. Cost of Maintenance. In the event that the need for maintenance or repair is caused through the willful or negligent act of the Lot Owner, his family guests, tenants, contractors, employees or invitees, or is caused by any hazard covered under a North Carolina Standard Fire and Extended Coverage Insurance policy, the cost of such maintenance or repair shall be added to and become a part of the Assessment to which the Lot is subject.

8.3. Maintenance Procedures. The Association shall establish regulations governing the procedure for exterior maintenance. In the event any Lot Owner desires to expend a sum greater than that sum authorized by the Association, he/she shall advance to the Association, prior to the commencement of work an amount necessary to cover the additional expenses and a lien shall be established against the Lot Owner's Lot for any deficiency.

9. EASEMENTS.

9.1. Blanket Utility Easement. A blanket easement upon, across, over, and under all of the Common Elements, and, to the extent reasonably necessary the portions of the Lots on which no portion of any building is constructed, is reserved for ingress and egress, installation,

replacing, repairing and maintaining all utilities, including, but not limited to water, sewer, gas, telephones, electricity, and a master antenna system. Notwithstanding such, no sewers, electrical lines, water lines, or other utility equipment or facilities may be installed or relocated in the Common Elements except as approved by the Declarant or, after the termination of Class B membership, the Association. Should any utility furnishing a service covered by this general easement request a specific easement by separate recordable documents, Declarant or, after the termination of Class B membership, the Association will have the right and authority to grant such easement. The easement provided for in this Article shall in no way affect other recorded easements within the Planned Community.

9.2. Association Easements. An easement is granted to the Association, its officers, agents, employees, and to any management company retained by the Association to enter in or to cross over the Common Elements. An easement is also granted to the Association over such portion(s) of additional Real Estate owned by the Declarant on which improvements, including utilities, are located, which serve the Planned Community and over such portion(s) of such Real Estate which provide access to such improvements, subject to Declarant's right to designate the exact location of such easements. Every Lot shall be subject to an easement for entry by the Association (and the Persons described above) for the purpose of correcting, repairing, or alleviating any emergency condition which arises upon any Lot and that endangers any improvement or portion of the Common Elements.

9.3. Temporary Construction Access and Disturbance Easement. An easement over, through and to the Common Elements is reserved and established in favor of Declarant and all Lot Owners for purposes of ingress, egress, regress, conduct of construction activity, storage of construction materials and the necessary disturbance of land for construction on any Lot. This easement shall be used only as and when necessary to facilitate the construction of improvements at any time on a Lot by Declarant or Lot Owner as well as the extension of driveways, sidewalks, underground drainage and utility conduit and hookups to any dwelling structure situated on a Lot. In each instance, the Person exercising these easement rights shall use its best efforts to minimize any soil or land disturbance activities and shall restore the land to a condition which is graded smooth and in harmony with surrounding areas. Should that Person fail to restore the disturbed land as required, the Association may restore the land to the required condition and that Person shall indemnify the Association for the reasonable expense incurred in performing that restoration. This easement shall be restricted to that Common Elements which shall be reasonably servient and proximate to the Lot(s) upon which the construction is taking place.

9.4. Repair, Maintenance and Reconstruction Easement. If any Townhome is located closer than five (5) feet from its lot line, the Lot Owner thereof shall have a perpetual access easement over the adjoining Lot to the extent reasonably necessary to perform repair, maintenance or reconstruction of his Townhome. The repair, maintenance or reconstruction shall be done expeditiously and, upon completion of the work, the Lot Owner shall restore, to the extent reasonably practical, the adjoining Lot to as near the same condition as that which existed prior to the commencement of the work. Should the Lot Owner fail to restore the adjoining Lot

as required, the adjoining Lot Owner and/or the Association may, at the other Lot Owner's expense, complete the required restoration.

9.5. Drainage Easement. For a period of eighteen (18) months following the last conveyance of a Lot to a Lot Owner by the Declarant, that Lot shall be subject to an easement for entry and encroachment by the Declarant for the purpose of correcting any grading or drainage problems with respect to that Lot or adjoining Lots. After such an entry, the Declarant, at its expense, shall, to the extent reasonably practicable, restore the affected Lot(s) to their original condition.

9.6. Easement for Minor Encroachments. All Lots and the Common Elements shall be subject to a perpetual easement for the encroachment of initial improvements constructed on Lots to the extent that such initial improvements actually encroach. These authorized encroachments shall include, but not be limited to, such items as overhanging eaves, roofs, gutters, downspouts, exterior storage rooms, bay windows, stoops, decks, patios, porches, steps and walls. In the event a Building is partially or totally destroyed and then rebuilt, the Lot Owners of the Townhomes so affected agree that minor encroachments of part of the adjacent Townhome units or Common Elements due to construction shall be permitted and that a valid easement for this encroachment and the maintenance thereof shall exist.

9.7. Governmental Easements.

9.7.1. Declarant reserves an easement for the benefit of the appropriate governmental entity over all Common Elements and over an area five (5) feet behind the curb line of any street or roadway in the Real Estate existing now or in the future for the setting, removal, and reading of water meters, the maintenance and replacement of water, sewage, and drainage facilities and the collection of garbage.

9.7.2. An easement is also granted to all police, fire protection, garbage, mail delivery, ambulance, and all similar persons to enter upon the Subdivision's streets and the Common Elements in the performance of their duties.

9.8. Access, Parking and/or Utility Easements. All Lots and the Common Elements shall be subject to all such access, parking and/or utility easements as are shown on any recorded plats of Real Estate located within the Planned Community, and any such access easements shall be considered part of the Common Elements, even though not owned in fee simple by the Association, and the costs of maintenance, repair and upkeep of the areas within such access and/or parking easements shall be Common Expenses.

10. ARCHITECTURAL COMMITTEE.

10.1. Members. The Architectural Committee shall consist of one (1) or more persons designated by the Declarant. At such time as Declarant no longer owns any Real Estate within the Planned Community (or earlier if the Declarant shall surrender this right in a written

instrument in recordable form executed by Declarant), the rights, powers, duties and obligations of the Architectural Committee shall without further action pass to the Association, whereupon the Executive Board shall then appoint three (3) or more persons as the members of the Architectural Committee. Prior to December 31, 2006, this provision shall not be amended or revoked without the Declarant's written consent.

10.2. Powers. The Architectural Committee shall have the right to refuse to approve any plans and specifications for Improvements proposed to be constructed on a Lot (the "Plans & Specifications") which are not suitable or desirable, in its sole discretion, for aesthetic or any other reasons, provided such approval is not unreasonably withheld. In approving or disapproving Plans & Specifications, the Architectural Committee shall consider the purposes of the Declaration as discussed in the Recitals, including the suitability of the proposed Improvements and materials to be used in those Improvements, the site upon which it is proposed to be erected, and the effect of the Improvements on adjacent or neighboring Real Estate. There is specifically reserved unto the Architectural Committee the right of entry and inspection upon any Lot for the purpose of determining whether there exists any construction of any Improvements which violates the terms of any approval by the Architectural Control Committee or the terms of this Declaration or of any other applicable covenants, conditions and restrictions. The Architectural Committee and the Executive Board is specifically empowered to enforce the provisions of this Declaration by any legal or equitable remedy. In the event it becomes necessary to resort to litigation to determine the propriety of any constructed Improvement, or to remove any unapproved Improvements, the prevailing party shall be entitled to recovery of all court costs and expenses (including reasonable attorney's fees).

11. ARCHITECTURAL CONTROL AND USE RESTRICTIONS.

11.1 Building Sites. Each Lot, as approved by the appropriate governmental entity, shall constitute a building site (a "Building Site") and shall be used for residential purposes only. The lay of the Lots as shown on the recorded plat shall be substantially adhered to; provided, however, that with the prior written approval of the Declarant (as long as Class B Membership exists), or, thereafter, the Association's Board or the Architectural Committee, and the appropriate governmental authority, the size and shape of any Lot may be altered. More than one Lot may be used as one Building Site provided the location of any structure permitted thereon is approved in writing by the Architectural Committee or the Declarant, its successors or assigns, and said Lot is recombined in accordance with any applicable zoning or other laws in force at the time of the change.

11.2. Setbacks. Except as contemplated by the party walls, no structure shall be located on any Building Site nearer than the minimum setback required by applicable zoning or other laws. For the purposes of this covenant, caves, steps, carports and open porches shall not be considered as a part of a Building, provided, however, that this shall not be construed to permit any portion of a Building on a Building Site to encroach upon another Lot. Provided it otherwise complies with the applicable zoning ordinances and the setbacks, if any, shown on the applicable recorded plat, the Declarant and/or the Architectural Committee may approve by written waiver a violation of these requirements.

11.3. Structures. Improvements on any Building Site shall be restricted solely to residential dwellings for residential use. All improvements erected upon a Lot shall be of new construction and no building or structures, other than the Amenities constructed by the Declarant or the Association and single-family Townhome buildings joined by a common exterior roof and foundation, shall be constructed. No building or structures shall exceed three (3) stories in height. No structures of a temporary character, manufactured home, trailer, basement, tent, shack, garage, barn or other out-building shall be used on any portion of the Planned Community at any time as a residence, either temporarily or permanently.

11.4. Approval of Plans & Specifications. No improvement shall be commenced, erected, or maintained within the Planned Community, nor shall an improvement be repaired or rebuilt after destruction by any hazard until completed Plans & Specifications, showing the nature, kind, space, height, materials, and location of the Improvement shall have been submitted to and approved in writing by the Architectural Committee. A failure to approve or disapprove completed Plans & Specifications within forty-five (45) days after they have been submitted shall be deemed to be an approval of those Plans & Specifications. Neither the Association, the Association's Executive Board, the Declarant, the Architectural Committee nor any officer, employee, director or members thereof shall be liable for damages to any persons by reason of mistake in judgment, negligence or nonfeasance arising out of or in connection with the approval, disapproval or failure to approve any Plans & Specifications. Every person who submits Plans & Specifications for approval agrees, by submission of such Plans & Specifications, that it will not bring any action or suit to recover any such damages.

11.5. Declarant Facilities. Notwithstanding any provision in this Article to the contrary, during the period of development and sale of the Lots and Townhomes the Declarant, and any builder revocably permitted by Declarant, is permitted, subject to the laws of the applicable governmental authority, to maintain such facilities and conduct such sales activities as Declarant deems reasonably required, convenient, or incidental to the development and sale of the Lots and Townhomes. These facilities/activities shall include but not be limited to sales tours, sales parties and promotions at the Amenities, a business/sales office, storage area, construction yards, model units, and signs. Prior to December 31, 2016, this provision shall not be amended or revoked without the Declarant's written consent.

11.6. Animals. No animals, livestock, or poultry of any kind shall be raised, bred, or kept on the Lots, except that a reasonable number of domesticated, household pets may be kept, provided they are not maintained for commercial purposes.

11.7. Screening. All equipment, garbage cans, service yards, wood piles, or storage piles shall be kept screened by adequate Improvements so as to screen them from view from the street and adjoining Lots. All garbage, trash, or rubbish shall be regularly removed from the Lot and shall not be allowed to unreasonably accumulate. No clothes lines, whether screened or not, shall be allowed outside of the Lot Owner's Townhome.

11.8. Leasing. No Lot or any portion of the Improvements thereon shall be leased for transient or hotel purposes, except that a Lot Owner may lease not less than the entire residential structure on its Lot, provided that each lease must be in writing, must be for a period of not less than one (1) year, and must provide that it is subject to this Declaration and the ByLaws and that any failure by a tenant to comply with such shall be a default under the lease. The Lot Owner shall promptly provide the Association with copies of any and all leases entered into by the Lot Owner.

11.9. Utility Devices. Without the prior written approval and the authorization of the Declarant (as long as Class B Membership exists), the Association's Board or the Architectural Committee, no exterior television or radio antennae, satellite dishes or solar panels or other utility devices, of any sort shall be placed, allowed or permitted upon any portion of the exterior of the Improvements to be located within the Planned Community except to the extent prohibition of the such devices is itself expressly prohibited by law. The Declarant and the Association, for the common benefit of the Lot Owners, reserves the right to install within the Planned Community such utility devices necessary to provide cable TV or similar services.

11.10. Business/Obnoxious Activity. No business activity of any kind or any obnoxious or offensive activity shall be carried on within the Planned Community or Improvements thereon, nor shall anything be done which may be or may become a nuisance or annoyance to the neighborhood. Nor shall any portion of the Planned Community be used in any way or for any purpose which may endanger the health or unreasonably disturb a Lot Owner or his tenants or invitees. No "For Sale," "For Rent" or similar signs (except as otherwise specifically authorized by the Association), advertising signs or tent signs, bill boards, unsightly objects or nuisances shall be erected, placed or permitted to remain within the Planned Community, and in no event in the Common Elements. The foregoing covenants shall not, however, apply to the business activities, signs, and billboards or the construction and maintenance of buildings, if any, of Declarant, its agents and assigns (including builders), during the construction and sales period for the Lots and the dwelling units constructed thereon. This right of the Declarant shall nevertheless be subject to applicable local ordinances and/or laws.

11.11. Vehicles. No boats, recreation vehicles, campers, motorcycles, tractors, trucks (other than one pick-up truck rated one-half ton or less), or trailers (the "Vehicles") of any Lot Owner or member of his family, his tenants, guest or contract purchasers shall be parked within the Common Elements. All Vehicles shall be stored either within the Lot Owner's garage or other facilities not located within the Planned Community. No Lot Owner shall park or store an inoperative or abandoned Vehicle or automobile on any Lot or on the streets or Common Elements in the Subdivision.

11.12. Tanks. Other than hot tubs or similar devices approved by the Architectural Committee, no above or below-ground tanks or pools will be permitted for the storage of fuel or water or any other substance. The installation of such approved hot tubs or similar devices shall be subject to reasonable screening requirements established by the Architectural Committee.

11.13. Lawn Ornaments. No decorative lawn ornaments shall be placed on any Lot without the prior written approval of the Architectural Committee.

11.14. Parking. Adequate off-street parking shall be provided to the Lot Owner of each Lot for the parking of automobiles and Vehicles owned by that Lot Owner. Lot Owners shall not be permitted to park their automobiles and Vehicles on the streets or Common Elements within the Planned Community except in spaces designated for such use by the Declarant or the Association.

11.15. Maintenance. Maintenance, upkeep, and repairs of any patio, deck, porch decking, screens and screen doors, exterior doors, and windows and window fixtures other hardware and Improvements outside the boundaries of the Improvements as originally constructed shall be the sole responsibility of the individual Lot Owner of the Lot and not in any manner the Association's. Any cooperative action necessary or appropriate to the proper maintenance and upkeep of the Common Elements and all exteriors and roofs of the Townhomes, including, but not limited to, recreation and parking areas and walks, shall be taken by the Association or by its duly delegated representatives. All fixtures and equipment installed within a Townhome commencing at a point where the utility lines, pipes, wires, conduits, or systems are within the Townhome's exterior walls, including the courtyards, shall be maintained and kept in repair by the Lot Owner thereof. A Lot Owner shall do no act, nor any work that will impair the structural soundness or integrity of another Townhome, nor impair any easement or hereditament, nor do any act or allow any condition to exist which will adversely affect the other Townhomes or their Lot Owners. All private utility systems (other than those serving a single Lot) located outside the exterior walls and/or within the Common Elements shall be maintained by the Association. The lawn irrigation system(s) serving the Lots and/or Common Elements shall be maintained by the Association. All public utility systems located outside the exterior walls and/or within the Common Elements shall be maintained by the appropriate utility company or governmental authority.

11.16. Sign Boards. No sign boards of any description shall be displayed upon or above any lot with the exceptions of political signs, signs erected by or with the consent of the Declarant for sales and promotional purposes and "for sale" or "for rent" signs erected by Lot Owners which shall be subject to such additional restrictions as may be reasonably adopted from time to time by the Executive Board.

11.17. Governmental Regulations. Each Lot Owner shall comply with all laws, ordinances, governmental building codes, health regulations, zoning restrictions and the like applicable to its Lot and/or Common Elements. In the event of any conflict between any provision of such governmental code, regulation or restriction and any provision of this Declaration, the more restrictive provision shall apply.

11.18. Additional Restrictions. The Declarant (as long as it hold Class B Membership) and thereafter, the Association, the Association's Board, or the Architectural Committee shall have the power to formulate, amend, publish and enforce other reasonable rules

and regulations concerning the architectural control and use of the Real Estate within the Planned Community.

11.19. Anti-Discrimination. No action shall at any time be taken by the Declarant, the Association, the Association's Board, or the Architectural Committee in the enforcement or interpretation of this Declaration which in any manner would unfairly discriminate against any Lot Owner in favor of any of the other Lot Owners.

11.20. Limited Liability. In no case shall the Declarant or the Association be responsible for failing to provide any emergency or regular fire, police or other public service to the Planned Community, or to the Lot Owners or Lot occupants. In no case shall any local or municipal authority or the State of North Carolina be responsible for maintaining any private street. Such responsibility shall rest with the Association and/or Lot Owners.

11.30. Waiver. Notwithstanding anything above to the contrary, the Declarant (as long as Class B Membership exists), the Association's Board, or the Architectural Committee shall have the right, in the exercise of their reasonable discretion, to waive one or more violations of the requirements of this Article. No waiver shall be effective unless in writing and nevertheless shall not operate as a waiver of any other requirement respecting the Lot in question or any other Lots subject to this Declaration. No waiver shall be effective if it shall cause the Lot or structures thereon to be in nonconformance with any applicable governmental ordinances.

12. GENERAL PROVISIONS.

12.1. Enforcement. The Declarant (as long as Class B Membership exists), the Association or any Lot Owner shall have the right to enforce, by a proceeding at law or in equity, the terms of the Declaration. Failure by the Association or by any Lot Owner to enforce any covenant or restriction herein shall in no event be deemed a waiver of the right to do so thereafter.

12.2. Severability. Invalidation of any one or more of these covenants or restrictions by judgment or court order shall in no way affect any other provision which shall remain in full force and effect.

12.3. Amendment.

12.3.1. The Declaration shall run with the land for a term of twenty (20) years from the date of recording of the Declaration or the last Supplementary Declaration or amendment thereto, and shall inure to the benefit of the Declarant (as long as Class B Membership exists), the Association or any Lot Owner or their respective legal representatives, heirs, successors, and assigns. This Declaration shall thereafter automatically be extended for successive periods of ten (10) years. Except as specifically otherwise provided in this document, the Declaration may be amended by an instrument signed by not less than the Lot Owners of sixty-seven percent (67.0%) of the Lots.

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12.3.2. If an amendment is executed, each such amendment shall be delivered to the Association's Board which shall, within thirty (30) days:

- (a) Reasonably assure itself that the amendment has been executed by the Lot Owners of the required number of Lots (for this purpose, the Board may rely on its roster of Members, and shall not be required to cause the title to any Lot to be examined); and
- (b) Attach the following certification:

CERTIFICATION

By authority of its Executive Board, Vintage Townhomes Phase III Association, Inc. certifies that the foregoing instrument has been duly executed by the Lot Owners of sixty-seven percent (67%) of the Lots in the Planned Community and is therefore a valid amendment to the Declaration recorded in Book ____ Page ____ in the office of the Register of Deeds for Union County, North Carolina.

Vintage Townhomes Phase III Association, Inc.

By: _____
President

Within the thirty (30) day period, the Association's Board shall cause the amendment to be recorded with the appropriate Register of Deeds' office. All amendments shall be effective from the date of recordation in the appropriate Register of Deeds' office; provided, however, that no such instrument shall be valid until it has been indexed in the name of the Association.

12.4. Disputes. In the event of any dispute arising concerning a provision of this Declaration, such dispute shall be settled by legal proceedings or the parties may, by mutual agreement, submit the dispute to a committee appointed by the Association for this purpose, and once submitted, the parties agree to be bound by the decision of that committee.

12.5. Voiting. Voiting by Members of the Association shall be in accordance with the applicable provisions set forth in this Declaration and the ByLaws.

12.6. Member Addresses. Each Member agrees to keep the Association informed of his address at any time and any notice sent or delivered to that address shall be sufficient. Each new Member agrees to provide the Association with evidence of his Lot Ownership for preparation of a membership roster and the roster as so completed shall be sufficient evidence as to the Lot Ownership of each Lot.

12.7. Gender and Grammar. All words and phrases in this Declaration shall be construed to include the singular or plural number, and the masculine, feminine, or neuter gender, as the context requires.

12.8. **Lot Owner Responsibility.** Notwithstanding anything in this Declaration to the contrary, a Lot Owner shall be responsible for any and all violations of these Declarations by his employees, agents, tenants, guests and invitee. When a party to this Declaration consists of more than one individual or entity, such party's liability hereunder shall be joint and several.

12.9. **Construction.** This Declaration shall be construed in accordance with the laws of North Carolina without giving effect to its conflict of laws principles. In case of any conflict between the Declaration and the Articles or the By-Laws, the Declaration shall control.

12.10. **Exhibits.** All Exhibits and Schedules, if any, attached to this Declaration are hereby incorporated by reference and made a part of this Declaration. The term "Declaration" as used herein shall be deemed to include all such Exhibits and Schedules.

12.11. **Remedies.** In the event of any default in and/or breach of any of the terms, conditions and provisions of this Declaration (either actual or threatened) the party or parties who are thereby aggrieved shall have the right to specific performance and/or injunction in addition to any and all other rights and remedies at law or in equity. The rights and remedies provided by this Declaration are distinct and cumulative and the use of any one right or remedy by any party shall not preclude or waive its right to use any or all other remedies. No delay or omission of a party to exercise any right or power arising from any default on the part of the other shall impair any such right or power, or shall be construed to be a waiver of any such default or an acquiescence therein. The rights and remedies provided herein are given in addition to any other rights the parties may have by law, statute, ordinance or otherwise.

12.12. **Approval.** As long as there is a Class B membership and as long as the Planned Community has been approved for VA or FHA guaranteed loans (but not otherwise), the following actions will require prior approval of the Veterans Administration and/or the Department of Housing and Urban Affairs: annexation of additional Properties, conveyance of Common Elements, dedication of or withdrawal of land from dedication of Common Elements, or amendment of this Declaration.

12.13. **Termination.** Any termination of the Planned Community shall be effected in accordance with N.C.G.S. § 47F-2-118 unless such termination shall have been caused by a taking of all of the Lots by eminent domain, in which case such termination will be effected in accordance with N.C.G.S. § 47F-1-107.

12.14. **Attorneys Fees.** Except as and subject to the limitations provided in N.C.G.S. § 47F-3-116, in any action brought to enforce provisions of this Declaration, the Association's Articles of Incorporation or By-Laws, or rules or regulations duly adopted by the Association, the prevailing party in such action shall be entitled to collect reasonable attorneys fees awarded by the court having jurisdiction over such action.

12.15. **Rules of Construction.** In the event of a conflict between the provisions of the Declaration and the Association's By-Laws, the Declaration shall prevail except to the extent it is

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inconsistent with the Act. To the extent any provisions of the Declaration, the Association's Articles of Incorporation or Bylaws violate the Act, such provisions shall be deemed amended and shall be construed to the extent necessary to comply with the Act.

IN WITNESS WHEREOF, the Declarant has caused this instrument to be executed by its duly authorized officers with its seal to be hereunto affixed by authority of its Board of Directors, this day first above written.

THE MATHISEN COMPANY

BY: *MC Mathisen*
Wae President

STATE OF NORTH CAROLINA
COUNTY OF *Mecklenburg*

I, *Beverly A. Mathisen*, a Notary Public certify that
N.A. Mathisen personally came before me this day and acknowledged that he/she is
Wae President of THE MATHISEN COMPANY, a North Carolina corporation, and that
he/she, as *Wae* President, being authorized to do so, executed the foregoing instrument on
behalf of the said corporation.

Witness my hand and seal, this *18th* day of *October*, 2006.

Beverly A. Mathisen
Notary Public
My Commission Expires: *09-01-09*



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EXHIBIT "A"

BEING all of Blocks 2, 3 and 4 as shown on final plat showing Vintage Townhomes, Phase III, Map 1 recorded in Plat Cabinet J, File Nos. 582-583 in the office of the Register of Deeds for Union County, North Carolina.