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DAVIE COUNTY, NC

BY Catherine E. McClamrock  
DEPUTY

**DECLARATION OF  
THE CONDOMINIUMS AT KINDERTON VILLAGE**

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Prepared by and after recording mail to:

**HORACK, TALLEY, PHARR & LOWNDES, P.A. (CDS)**  
2600 One Wachovia Center  
301 South College Street  
Charlotte, North Carolina 28202-6038

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## DECLARATION OF

## THE CONDOMINIUMS AT KINDERTON VILLAGE

THIS DECLARATION, made this 18 day of December, 2002, by MULVANEY HOMES, INC., a North Carolina corporation (hereinafter referred to as the "Declarant"), for itself, its successors and assigns, pursuant to the provisions of Chapter 47C of the North Carolina General Statutes, entitled the North Carolina Condominium Act ("Act").

RECITALS

Declarant is the owner in fee simple of certain real property situated in the County of Davie, and State of North Carolina, more particularly described on Exhibit A attached hereto and made a part hereof, together with all buildings and improvements now or hereafter constructed or located thereon, and all rights, privileges, easements and appurtenances belonging to or in any way pertaining to said real property; and

Declarant desires and intends, by the filing of this Declaration, to submit the above described property, the buildings located thereon and all other improvements constructed thereon, together with all appurtenances thereto, to the provisions of the North Carolina Condominium Act;

Declarant does hereby submit the property described in Exhibit A to the provisions of the Act, and does hereby publish and declare that all of the subsequently defined Property is held and shall be held, conveyed, hypothecated, encumbered, used, occupied and improved, subject to the following covenants, conditions, restrictions, uses, limitations and obligations, all of which are declared and agreed to be in furtherance of a plan for the improvement of said property and the division thereof into condominium units, and shall be deemed to run with the land, and shall be a burden and benefit to the Declarant, its successors and assigns, and any parties acquiring and owning an interest in the real property and improvements, their grantees, successors, heirs, executors, administrators, devisees and assigns.

Additionally, the Property is part of a larger parcel of real property upon which will be created a residential community to be known as Kinderton Village (the "Residential Subdivision"). The developer of the Residential Subdivision, Adams Egloff Avant Properties, LLC, has deemed it desirable, for the efficient preservation, protection and enhancement of the values and amenities in the Residential Subdivision, to create a master residential association known as The Kinderton Village Residential Homeowners Master Association, Inc. ("Residential Association"), to which will be delegated and assigned the powers of maintaining and administering any common areas within the Residential Subdivision (not to include any Common Elements or Limited Common Elements, as defined below), administering and enforcing covenants and restrictions for the Residential Subdivision, and collecting and disbursing the assessments and charges set forth in the Declaration of Covenants, Conditions and Restrictions for Kinderton Village Residential Homeowners Master Association, Inc. ("Residential Declaration") attached hereto as Exhibit G.

The Unit Owners within the Condominium created by this Declaration shall have certain easement rights, as further described herein, to the common areas of the Residential Subdivision, and, therefore, shall also share certain expense obligations with regards to the maintenance of said common areas. For that reason, Declarant intends for the Condominium to be subject not only to the terms and conditions of this Declaration, but also to the terms and conditions of the Residential Declaration. In the event of an indirect conflict between this Declaration and the Residential Declaration, the Residential Declaration shall control unless it is contrary to the North Carolina Condominium Act. Association shall be a Member of the Residential Association and shall have one vote for each Unit Owner in the Association. All dues or assessment obligations related to a Unit in the Residential Association shall be as set forth in this Declaration, which includes a charge for the obligations of the Unit Owners under the terms of the Residential Declaration.

**ARTICLE I  
DEFINITIONS**

In addition to the terms defined above, certain terms, as used in this Declaration and the exhibits attached

hereto and made a part hereof, shall be defined as follows, unless the context clearly indicates a different meaning therefor:

1.1. **"Act" or "Condominium Act"** shall mean the North Carolina Condominium Act, Chapter 47C of the North Carolina General Statutes, as in effect as of the date of the filing of this Declaration.

1.2. **"Additional Property"** shall mean the property described in Exhibit A-1, together with all buildings and improvements now or hereafter constructed or located thereon, and all rights, privileges, easements, and appurtenances belonging to or in any way pertaining to said property.

1.3. **"Allocated Interests"** shall mean the undivided interests in the Common Elements, common expense liability, and the votes in the Association allocated to each Unit.

1.4. **"Articles of Incorporation"** shall mean the Articles of Incorporation of the Association attached as Exhibit F.

1.5. **"Association"** shall mean The Condominiums At Kinderton Village Owners Association, Inc., a nonprofit corporation organized under Section 47C-3-101 of the Act.

1.6. **"Assessment"** shall mean a share of the funds required for the payment of Common Expenses which from time to time is assessed against the Unit Owners, and such additional sums which may be assessed directly against one or more Unit Owners alone.

1.7. **"Board"** shall mean the Executive Board of the Association.

1.8. **"Building(s)"** shall mean the structure(s) erected upon the Property.

1.9. **"Bylaws"** shall mean the Bylaws of the Association attached as Exhibit E.

1.10. **"Common Elements"** shall mean all portions of the Condominium except the Units. All "Limited Common Elements" shall be part of the Common Elements.

1.11. **"Common Expense(s)"** shall mean expenditures made or liabilities incurred by or on behalf of the Association, together with any allocations to reserves.

1.12. **"Common Expense Liability"** shall mean the liability for common expenses allocated to each Unit pursuant to Section 47C-2-107 of the Act.

1.13. **"Condominium"** shall mean the condominium created by this Declaration.

1.14. **"Condominium Documents"** shall mean this Declaration and all of the exhibits hereto and the Articles of Incorporation for the Association, as the same shall from time to time be amended.

1.15. **"Declarant"** shall mean Mulvaney Homes, Inc., a North Carolina corporation, and (i) any other person who has executed this Declaration, or who hereafter executes an amendment to this Declaration to add Additional Property, except institutional lenders and except persons whose interests in the Property will not be conveyed to Unit Owners, and (ii) any person who succeeds to any Special Declarant Rights.

1.16. **"Declarant Control Period"** shall mean the period during which Declarant, or persons designated by it, may appoint and remove the officers and directors of the Board. The period of Declarant control shall commence with the filing date of this Declaration and continue until the earlier of the following five dates: (i) the date two years after Declarant has ceased to offer Units for sale in the ordinary course of business, (ii) the date upon which Declarant voluntarily, in writing, surrenders control of the Condominium, (iii) the date 120 days after the Declarant has conveyed 75% of the Units (including units which may be created pursuant to Special Declarant Rights) to Unit Owners other than a Declarant, (iv) the date two years after any development right to add new Units

was last exercised by Declarant, or (v) seven years after the first Unit was conveyed to a Unit Owner.

1.17. "Declaration" shall mean this document and any amendments to this document.

1.18. "Eligible Mortgage Holder" shall mean each First Mortgagee who has requested the Association to notify it of any proposed action that requires the consent of a specified percentage of Eligible Mortgage Holders pursuant to Section 11.4 hereof.

1.19. "First Mortgage" shall mean a mortgage or deed of trust which has been recorded so as to give constructive notice thereof, and which is a first lien on the Units or Units described therein.

1.20. "First Mortgagee" shall mean a holder, from time to time, of a First Mortgage as shown by the records of the Office of the Register of Deeds for Davie County, North Carolina, in which the First Mortgage is recorded, and including a purchaser at foreclosure sale upon foreclosure of a First Mortgage until expiration of the mortgagor's period of redemption. If there shall be more than one holder of a First Mortgage, they shall be considered as, and act as, one First Mortgagee for all purposes under this Declaration and the Bylaws.

1.21. "HUD/VA/FNMA/FHLMC" shall refer to the U.S. Department of Housing and Urban Development, and/or the Veterans Administration, and/or the Federal National Mortgage Association, and/or the Federal Home Loan Mortgage Corporation, any governmental authority which succeeds said organizations, and/or any other governmental or quasi-governmental authority which governs, regulates or administers the selling of residential dwellings or the issuing of mortgages on such dwellings.

1.22. "Identifying Number" shall mean the address which identifies each Unit in the Condominium.

1.23. "Lessee" shall mean the party entitled to present possession of a leased Unit whether lessee, sublessee, or assignee, together with their employees, agents, and invitees.

1.24. "Limited Common Elements" shall mean those portions of the Common Elements allocated by this Declaration or any amendments hereto, the Plans or by operation of Section 47C-2-102(2) or (4) of the Act for the exclusive use of one or more, but fewer than all, of the Units. That portion of the property upon which heating and air conditioning equipment serving a Unit is located shall constitute a Limited Common Element allocated specifically to the Unit served by such equipment.

1.25. "Occupant" shall mean any person or persons in possession of a Unit, including Unit Owners, Lessees, employees, agents, and invitees of such person or persons.

1.26. "Person" shall mean a natural person, corporation, business trust, estate, trust, partnership, association, joint venture, limited liability company, government, governmental subdivision or agency or other legal or commercial entity.

1.27. "Plans" shall mean the plans of the Condominium recorded with, and by the Act made a part of, this Declaration, as the same may hereafter be amended, and described on **Exhibit C**.

1.28. "Plat" shall mean the survey plat depicting the Condominium and the location of the Buildings on the Property recorded with, and by the Act made a part of, this Declaration, as the same may later be amended, and described on **Exhibit C**.

1.29. "Property" shall mean the real property described on **Exhibit A**, together with the buildings and improvements now or hereafter constructed or located thereon, and all rights, privileges, easements and appurtenances belonging to or in any way pertaining thereto, and all articles of personal property intended for common use in connection therewith.

1.30. "Residence" shall mean Unit.

1.31. "Residential Purposes" means use for dwelling purposes.

1.32. "Rules and Regulations" shall mean the rules and regulations of the Condominium as promulgated by the Board from time to time.

1.33. "Special Declarant Rights" shall mean rights reserved for the benefit of the Declarant herein pursuant to the provisions of Section 47C-2-105(a)(8) of the Act, including but not limited to the following: to complete the improvements indicated on the Plans; to exercise any development right, including the right to add additional property or withdraw portions of property from the Condominium, as defined in Section 47C-2-110 of the Act; to maintain, pursuant to Section 47C-2-115 of the Act, sales offices, management's offices, signs advertising the Condominium, and models; to use, pursuant to Section 47C-2-116 of the Act, easements through the Common Elements for the purpose of making improvements within the Condominium; to make, pursuant to Section 47C-2-121 of the Act, the Condominium a part of a larger condominium; or to appoint or remove pursuant to Section 47C-3-103(d) of the Act, any officer or director of the Association or any Board Member during any period of Declarant control.

1.34. "Unit" shall mean a portion of the Condominium designated for separate ownership or occupancy, whether or not contained solely or partially within a Building, together with its percentage of undivided interest in the Common Elements as set forth on Exhibit D. Each Unit is designated and delineated on the Plans.

1.35. "Unit Owner" or "Owner" shall mean the Person or Persons, including the Declarant, owning a Unit in fee simple. A Person having an interest in a Unit solely as security for an obligation shall not be considered a Unit Owner.

## ARTICLE II SUBMISSION BY DECLARANT OF THE PROPERTY TO THE ACT

2.1 Submission. Declarant hereby submits the Property to the Act.

2.2 Name of Condominium. The Property shall hereafter be known as The Condominiums At Kinderton Village.

2.3. Name of Association. The name of the association of Unit Owners shall be known as "The Condominiums At Kinderton Village Owners Association, Inc."

2.4. General Description of the Real Estate. The real estate included in the Condominium is described and identified on Exhibit A, attached hereto and made a part hereof.

2.5. Division of Property into Separately Owned Units. Declarant, pursuant to the Act, and to establish a plan of condominium ownership for the Condominium, does hereby divide the Property into Units and does hereby designate all such Units for separate ownership, subject however, to the provisions of Section 2.6 relating to alteration of Units.

2.6. Alterations of Units. Subject to the provisions of the Bylaws, a Unit may be altered pursuant to the provisions of Sections 47C-2-111 and 47C-2-112 of the Act.

2.7. Description of Units. The Plat showing the location of the Buildings on the Property and the Plans describing the particular details of the Buildings, are attached hereto and made a part hereof as Exhibit C, which Plat and Plans depict all the relevant particulars of the Condominium, including the layout, the number of Units, the location of each Unit and its Identifying Number, dimensions, ceiling and floor elevations and the locations of the Limited and general Common Elements appurtenant to and affording access to each Unit.

(a) The Identifying Number of each Condominium Unit and other data concerning its proper identification are set forth in Exhibit D, attached hereto and made a part hereof.



(b) Each Unit shall constitute a single freehold estate and shall consist of all of the space within the living quarters bounded by the undecorated and/or unfinished interior surfaces of its perimeter walls, exterior doors and exterior windows facing the interior of the Units, the undecorated surfaces of the ceiling facing the interior of the Unit, and the topmost surfaces of the subflooring. Each Unit includes those portions of the Building within such boundaries, and the space so encompassed, including without limitation, the decorated surfaces, including paint, lacquer, varnish, wallpaper, paneling, tile, carpeting and any other furnishing or decorative materials applied to interior walls, doors, floors and ceilings, and interior surfaces of permanent walls, windows, doors, floors and ceilings, except that no part of the Common Elements shall be considered part of a Unit. Each Unit shall include those portions of the heating and air conditioning system for the Unit which are located within the perimeter walls of the Unit and which exclusively serve the Unit, wherever situated.

2.8. Use of Common Elements. Each Unit Owner shall have the right to use the Common Elements, with the exception of the limitations set forth in Section 2.9, in accordance with the purposes for which they are intended, and for all purposes incident to the use and occupancy of the Unit Owner's Unit, including unrestricted ingress and egress to and from the Owner's Unit, and such right shall be appurtenant to and run with the Unit; provided, however, that no person shall use the Common Elements or any part thereof in such a manner as to interfere with or restrict or impede their use by others entitled to their use, or in any manner contrary to or not in accordance with this Declaration, Bylaws, and the Rules and Regulations.

2.9 Limited Common Elements. The Limited Common Elements, as defined above in Article I, and in Sections 47C-2-102(2) and 47C-2-102(4) of the Act, serving or designed to serve a particular Unit are hereby allocated solely and exclusively to each such Unit.

2.10. Allocated Interests. The allocations to each Unit of a percentage of undivided interest in the Common Elements and of a percentage of Common Expenses are as stated on Exhibit D. The allocation of the undivided interests in the Common Elements and of the Common Expenses has been determined by a ratio formulated upon the relation that the square foot area of each Unit bears to the then aggregate square foot area of all Units. The votes are equally allocated to all Units with each Unit Owner having one (1) vote for each Unit owned.

2.11. Title Exceptions. The liens, defects and encumbrances affecting the Property to which the rights of Unit Owners and Occupants are hereby made subject are set out on Exhibit B.

2.12. Nature of Interest in Units. Every Condominium Unit, together with its undivided Allocated Interest in the Common Elements, shall for all purposes be, and it is hereby declared to be and to constitute, a separate parcel of real property, and the Unit Owner shall be entitled to the exclusive ownership in fee simple and possession of the Unit Owner's Unit, subject only to the covenants, restrictions, easements, Bylaws, resolutions and decisions adopted pursuant hereto, and as may be contained herein and in the accompanying Rules and Regulations. The percentage of undivided interest in the Common Elements of each Unit shall not be separated from the Unit to which it appertains, and shall be deemed to be transferred with the Unit, even if such interest is not expressly mentioned or described in the conveyance, encumbrance, release or other instrument transferring such Unit. Any conveyance, encumbrance, judicial sale, or other transfer (voluntary or involuntary) of an Owner's percentage interest in the Common Elements shall be void unless the Unit to which that interest is allocated is also transferred.

2.13. Separate Tax Listings. Every Unit, together with its undivided interest in the Common Elements, shall be separately assessed and taxed by each assessing unit for all types of taxes authorized by law. Each Unit Owner shall be liable solely for the amount of taxes against his individual Unit.

2.14. Unit Owner's Rights and Duties. Each Unit Owner shall be subject to all the rights and duties assigned to Unit Owners under the terms of this Declaration and the Bylaws. When there are unsold units in the Condominium, the Declarant also enjoys the same rights and assumes the same duties as they relate to each individual unsold Unit.

### ARTICLE III RESERVATION OF SPECIAL DECLARANT RIGHTS

## AND THE RIGHT TO ADD ADDITIONAL PROPERTY

3.1. Reservation of Special Declarant Rights. Declarant hereby reserves all Special Declarant Rights as defined in Section 1.33 and as provided in Section 47C-2-105(a)(8) including but not limited to the following: to complete the improvements indicated on the Plans; to exercise any development right, including the right to add additional property or withdraw portions of property from the Condominium, as defined in Section 47C-2-110 of the Act; to maintain, pursuant to Section 47C-2-115 of the Act, sales offices, management offices, signs advertising the Condominium, and models; to use, pursuant to Section 47C-2-116 of the Act, easements through the Common Elements for the purpose of making improvements within the Condominium; to make, pursuant to Section 47C-2-121 of the Act, the Condominium a part of a larger condominium; or to appoint or remove pursuant to Section 47C-3-103(d) of the Act, any officer or director of the Association or any Board Member during any period of Declarant control. Each of such rights may be exercised by Declarant within the ten year period immediately following the date of the recording of this Declaration, unless a shorter period of time is required by the Act.

3.2. Transfer of Special Declarant Rights. All Special Declarant Rights provided in the Condominium Documents are transferable pursuant to Section 47C-3-104 of the Act.

3.3. Declarant's Right to Add Additional Property. Declarant expressly reserves the right to add the Additional Property to the Condominium. All or part of the Additional Property identified and described on Exhibit A-1 may be added to the Condominium at different times, but no assurances are made in regard to the order in which such portions may be added. Declarant shall have no duty or obligation of any kind to add any or all of the Additional Property. The method of adding the Additional Property to the Condominium shall be pursuant to Section 47C-2-110 of the Act. Provided, however, that no Additional Property may be added to the Condominium without the prior written consent of HUD/VA/FNMA/FHLMC so long as HUD/VA/FNMA/FHLMC, or any one thereof, holds, insures or guarantees any mortgage on any Unit within the Condominium.

3.4. Maximum Number of Additional Units; Units Restricted to Residential Use. The maximum number of additional Units that may be created within the Additional Property is the difference between two hundred twenty-eight (228) total Units less the number of Units described in Exhibit A. All of such Units will be restricted exclusively to residential use.

3.5. Compatibility of Style. It is Declarant's present intent that any Buildings and Units that may be erected upon the Additional Property or a portion thereof will be compatible with the other Buildings in the Condominium in terms of architectural style, quality of construction, and size. However, Declarant expressly reserves the right to change the architectural style and size of any Buildings and Units that may be erected upon the Additional Property.

3.6. Applicability of Restrictions. All restrictions in this Declaration and the Bylaws affecting use, occupancy and alienation of Units will apply to any and all additional Units that may be created within the Additional Property.

3.7. Other Improvements and Common Elements. In addition to the Buildings and Units that may be erected upon the Additional Property or a portion thereof, the other improvements and Common Elements that may be made or created upon or within the Additional Property or any portion thereof which may be added to the Condominium will be generally similar in quality and quantity to the improvements and Common Elements located in the Condominium.

3.8. Applicability of Assurances if Additional Property Not Added. The assurances made in this Article III will not apply with respect to any Additional Property that is not added to the Condominium. In the event that Declarant shall not expand the Condominium by the use of any portion of the Additional Property, Declarant shall have the right to develop all or any portion of the Additional Property without restriction.

3.9. Allocation of Interest. If Declarant adds the Additional Property, or portions thereof, to the Condominium, the percentage interest of each Unit Owner in the Common Elements and the Common Expenses will be determined by a ratio formulated upon the relation that the square foot area of each Unit bears to the then

aggregate square foot area of all Units.

#### ARTICLE IV GRANT AND RESERVATION OF EASEMENTS AND LICENSES

4.1. Encroachments. To the extent that any Unit or Common Element encroaches on any other Unit or Common Element, whether as the result of construction, reconstruction, repair, shifting, settlement, or other movement of any portion of the improvements, or otherwise, a valid easement for the encroachment exists, which easement shall continue for so long as each such encroachment exists. The easement does not relieve a Unit Owner of liability in case of the Unit Owner's willful misconduct. No such easement shall arise if the encroachment materially interferes with the reasonable use and enjoyment of the Unit or Common Element so encroached upon.

4.2. Easements Through Walls. Easements are hereby declared and granted to the Association and to such persons as are authorized by the Association, to install, lay, maintain, repair, and replace any chutes, flues, ducts, vents, pipes, wires, conduits and other utility installations, and structural components running through the walls of the Units, whether or not such walls lie in whole or in part within the boundaries of any Unit.

4.3. Easements to Repair, Maintain, Restore and Reconstruct. Wherever in, and whenever by, this Declaration, the Bylaws or the Act, a Unit Owner, the Association, the Board, or any other person, is authorized to enter upon a Unit or the Common Elements to inspect, repair, maintain, restore, or reconstruct all or any part of a Unit or the Common Elements, such easements as are necessary for such entry and such repair, maintenance, restoration or reconstruction are hereby declared and granted. Damage occasioned by the exercise of such grant shall be promptly repaired at the expense of the party causing such damage.

4.4. Easements for Utilities. The Units and Common Elements shall be, and are hereby made, subject to easements in favor of the Declarant (until Declarant shall have satisfied all of its obligations under the Declaration and Bylaws and all commitments in favor of any Unit Owner and the Association), the Association, appropriate utility and service companies and governmental agencies or authorities for such utility and service lines and equipment as may be necessary or desirable to serve any portion of the Property. The easements so provided for shall include, without limitation, rights of Declarant, the Association, any providing utility, any service company, and any governmental agency or authority and any of them to install, lay, maintain, repair, relocate and replace gas lines, pipes and conduits, water mains and pipes, sewer and drain lines, telephone wires and equipment, television equipment and facilities (cable or otherwise), electrical wires, conduits and equipment and ducts and vents and any other appropriate equipment and facilities over, under, through, along and on the Units and Common Elements. Notwithstanding the foregoing provisions, unless approved in writing by the Unit Owner or Unit Owners affected thereby, any such easement through a Unit shall be located either in substantially the same location as such facilities or similar facilities existed at the time of first conveyance of the Unit by the Declarant to a grantee other than the Declarant or so as not to materially interfere with the use or occupancy of the Unit by its Occupants. The Association shall have the authority to grant permits, licenses and easement over the Common Elements for the purposes recited above.

4.5 Declarant's Easement.

(a) Declarant hereby reserves such easements through the Common Elements as may be reasonably necessary for the purposes of discharging its obligations, exercising Special Declarant Rights, and completing the development and construction of the Condominium, which easements shall exist as long as reasonably necessary for such purpose. In addition to the easement in the foregoing sentence and the easements reserved elsewhere in this Article IV, Declarant hereby reserves an easement for vehicular and pedestrian ingress, egress, and regress, and for utility purposes, for the benefit of land adjoining the Condominium. The use of these easement rights shall be limited to the development of such adjoining tracts, the construction of improvements thereon, and the sale of such property as improved. Such rights shall expire after the accomplishment of such purposes and, in all events, after seven years from the filing of this Declaration.

(b) Declarant, and its successors and assigns owning the Additional Property, or any portion

thereof, shall have and does hereby reserve a perpetual nonexclusive right and easement of use of those portions of the Common Elements of the Condominium used as streets or driveways and of use of any and all water lines, sewer lines, storm water detention ponds, drainage easements, storm drains, electric, telephone, or cable television wires or conduits, gas lines, or similar utilities facilities that are a part of the Common Elements, to the extent reasonably necessary for Declarant, or such other owner of Additional Property, or a portion thereof, to have ingress and egress to and from the Additional Property over the Common Elements, and to provide, if necessary, drainage facilities and utility services including sewer lines and the use of any storm water detention ponds, drainage easements, storm drains and other drainage facilities to the Additional Property. Provided, however, the owner of the Additional Property exercising such rights and easements shall contribute a reasonable pro-rata share of the cost of the operation and maintenance of the utility facilities and other portions of the Common Elements so utilized. These easements and rights may not be changed without the prior written consent of all parties entitled to the exercise of such easements and rights.

4.6 Easements Benefitting Units. Pursuant to Section 4.5 of the Residential Declaration, all Unit Owners shall have an easement across, on, over and to the Common Area (as defined in the Residential Declaration) of the Residential Subdivision for the benefit and enjoyment of the Unit Owners. Unit Owners shall be entitled to use and enjoy the Common Area, subject to the rules and regulations set forth in the Residential Declaration. By way of example, but not limitation, ownership of a Unit shall entitle that Unit Owner to use the Amenity Area and Recreational Facilities as more particularly defined in the Residential Declaration. Provided, however, that such rights shall only be extended to Unit Owners in good standing with the Association.

4.7 Easements across the Common Elements. The general Common Elements (not to include any Limited Common Elements) shall be, and are hereby made, subject to easements in favor of all Owners (all as defined in the Residential Declaration). Such owners shall be entitled to use and enjoy the general Common Elements, subject to this Declaration, the Bylaws and any Rules and Regulations. Provided, however, that such rights shall only be extended to members in good standing with the Residential Association.

4.8. Easements to Run With Land. All easements and rights described in this Article IV are appurtenant easements running with the land, and except as otherwise expressly provided in this Article IV shall be perpetually in full force and effect, and shall inure to the benefit of and be binding upon Declarant, the Association, Unit Owners, Occupants, First Mortgagees and any other person having any interest in the Condominium or any part thereof. The Condominium and every part thereof shall be conveyed and encumbered subject to and together with all easements and rights described in this Article IV, whether or not specifically mentioned in any such conveyance or encumbrance.

## ARTICLE V RESTRICTIONS, CONDITIONS AND COVENANTS

5.1. Compliance with Declaration, Bylaws and Rules and Regulations. Each Unit Owner and Occupant shall comply with all applicable provisions of the Act, this Declaration, the Bylaws, the Articles of Incorporation of the Association, and the Rules and Regulations, as amended. Failure to comply shall be grounds for an action by the Association, an aggrieved Unit Owner, or any person adversely affected, for recovery of damages, injunction or other relief. The acceptance of a deed of conveyance or the entering into of a lease or the entering into occupancy of any Unit shall constitute an agreement that the provisions of this Declaration, the Bylaws and the Rules and Regulations are accepted and ratified by such Unit Owner or Occupant.

5.2. Administration of Condominium. The Condominium shall be administered in accordance with the provisions of the Act, this Declaration and the Bylaws.

5.3. Restrictions on Use, Occupancy and Alienation. The Units, Common Elements and Limited Common Elements shall be occupied and used as follows:

(a) Except as may be otherwise expressly provided in this Declaration, each Unit shall be used for Residential Purposes only. No trade or business of any kind may be conducted. Lease or rental of a Unit for residential purposes shall not be considered to be a violation of this Covenant so long as the lease is in compliance with the provisions of this Declaration, the Bylaws and reasonable Rules and Regulations adopted by the Board.

(b) There shall be no obstruction of the Common Elements, and the Association shall have the right to limit the number of guests of Unit Owners who may use any of the Common Elements.

(c) Nothing shall be done or kept in any Unit or in the Common Elements which will increase the rate of insurance on the Common Elements without the prior written consent of the Board. No Owner shall permit anything to be done or kept in his Unit or in the Common Elements which would result in the cancellation of insurance on any Unit or any part of the Common Elements, or which would be in violation of any law or for any immoral or improper purpose. No waste will be committed to the Common Elements.

(d) No sign of any kind shall be displayed to the public view from any Unit or from the Common Elements or Limited Common Elements without the prior written consent of the Board; provided, however, that the Declarant shall be exempt from this restriction. Provided, further, that "For Sale" or other similar type sign (excluding "For Rent" signs) may be displayed in front of a Unit for a reasonable time, such sign not to exceed 3 feet by 2 feet in size.

(e) No noxious or offensive activity shall be carried on in any Unit, or in the Common Elements, nor shall anything be done therein which will be an annoyance or nuisance to other Unit Owners or Occupants.

(f) No animal shall be kept in or on the Property, except for generally accepted household pets. Such pets may not be kept or bred for any commercial purpose and shall have such care and restraint as is necessary to prevent them from being or becoming obnoxious or offensive on account of noise, odor, unsanitary conditions or other nuisance. Without limiting the generality of the foregoing, Unit Owners and Occupants shall promptly clean up and properly dispose of animal waste deposits left by their pets outside the Units. No more than two pets may be housed within a Unit without written permission of the Board. No pets may be permitted to run loose upon the Common Elements or Limited Common Elements, and any Unit Owner who causes or permits any animal to be brought or kept upon the Property shall indemnify and hold the Association harmless for and from any loss, damage or liability which it sustains as a result of the presence of such animal on the Property, regardless of whether the Association or the Board has given its permission therefor.

(g) Unit Owners shall have the right to lease their respective Units, subject to the following limitations:

(i) Said lease shall be made subject to this Declaration and the Bylaws, and a failure by the Lessee to comply with the terms of these documents shall be made a default under the lease;

(ii) A Unit Owner shall be liable for the defaults of his Lessee under this Declaration and Bylaws;

(iii) All leases shall be in writing and the Unit Owner shall promptly provide the Association with a copy of any lease of a Unit;

(iv) All leases shall have a minimum initial term of six (6) months.

**Furthermore, pursuant to Article XI of the Residential Declaration, in order for the Residential Subdivision to comply at all times with the regulations promulgated by HUD/VA/FNMA/FHLMC which limit the number and/or percentage of rental properties (i.e. non-owner occupied), the following special limitations on leasing shall apply:**

(i) No Unit may be offered for rent or lease without the express written approval of the Association, the Residential Association, and the Declarant, for so long as the Declarant owns any Unit or Adams Egloff Avant Properties, LLC (the declarant under the Residential Declaration) owns any other lot or dwelling unit in the Residential Subdivision. Unit Owners desiring to lease their Units shall submit to the Association a

summary of the proposed lease terms and a copy of the proposed lease at least sixty (60) days prior to the proposed commencement date of such lease. Failure by the Association, the Residential Association and/or the Declarant to approve or deny such lease within thirty (30) days of receipt shall constitute an approval of said lease.

(ii) Approval or denial of any proposed lease may be made by the Association, the Residential Association and/or the Declarant in their absolute discretion. The foregoing notwithstanding, all leases shall be denied in the event they would contribute to any of the following:

(A) Causing the total number of rental Units within the Condominium to exceed twenty percent (20%) of the total number of Units within the Condominium;

(B) Causing the total number of rental properties within the Residential Subdivision to exceed twenty percent (20%) of the combined number of Dwellings (as defined in the Residential Declaration) and Units in the Residential Subdivision; or

(C) Causing the total number of rental properties (or rental Units) to exceed any limitation established by HUD/VA/FNMA/FHLMC.

Each Unit Owner, by taking title to his Unit, acknowledges that the foregoing limitation on alienability of real property is reasonable under the circumstances and serves to benefit the common scheme of the Condominium and the Residential Subdivision, as well as the common well being of all Unit Owners.

(h) Nothing shall be altered or constructed in or removed from the Common Elements, including the Limited Common Elements, except upon the written consent of the Board. Without limiting the generality of the foregoing, and subject only to such federal, state, and local laws and ordinances as may lawfully impose limitations on this provision, no television, radio, or other telecommunications antenna, dish, or similar device may be installed except in accordance with the Rules and Regulations, and in such fashion as to be the least visually intrusive to the other Residence and to neighboring properties.

(i) The Board is authorized to adopt the Rules and Regulations for the use of the Condominium, said rules to be furnished in writing to the Owners and to be enforced pursuant to the provisions of the Bylaws.

(j) No part of the Common Elements may be subject to a lease between one or more Unit Owners (or the Association) and another party.

(k) Vehicular parking is prohibited anywhere within the Condominium except for the designated areas within the Condominium. No vehicle maintenance activities shall be conducted upon any of the Common Elements, including the designated parking areas, except routine cleaning, washing and waxing.

(l) All receptacles for trash, recyclables, and garbage shall be kept out of sight except for the designated trash pickup day. It shall be the responsibility of the Unit Owners to dispose of all garbage, trash and other refuse in the trash compactors located within the Residential Subdivision and designated for such use.

#### 5.4. Use by Declarant.

(a) The provisions of this Article or any other provision of this Declaration or the Bylaws notwithstanding, Declarant shall have an easement to maintain sales offices and models for sales of Units throughout the Condominium. Declarant shall have the right to relocate, from time to time, and to discontinue and reestablish, from time to time, within the Condominium, until all of the Units have been conveyed to a Unit Owner other than a Declarant, any one or more of such offices or models. Declarant also shall have the right to change the use or combination of uses of such offices or models, provided that such offices or models shall be used only for sales

offices or models. The total number of such offices or models maintained at any time by a Declarant shall not exceed three (3) and the size of any such relocated or reestablished office or model shall not exceed the size of the largest Unit in the Condominium.

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

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

5.6 Prohibitions on Use of Common Elements. No Unit Owner or Occupant, except Declarant during the Declarant Control Period, shall alter, construct anything upon, or remove anything from, the Common Elements, or paint, decorate, landscape or adorn any portion of the Common Elements, without the prior written consent of the Board. Each Unit Owner shall maintain any outdoor area designated as a Limited Common Element appurtenant to such Owner's Unit, in a good, clean, and well kept condition. No part of any such area visible from any location outside such area may be used for temporary or permanent storage of any type of material, except for such items as are routinely used in the enjoyment of such areas, such as lawn furniture, and like items. No Common Element or Limited Common Element shall be used in any way for the drying or airing of clothing, rugs or other fabrics. Entrances, sidewalks, yards, driveways, parking area and stairways shall not be obstructed in any way, other than normal usage by a Unit Owner. No "garage sales" or "yard sales" shall be permitted outside of a Unit.

5.7 Nuisances. No nuisances shall be allowed upon the Property and no person shall engage in any use, practice or activity upon the Property which is noxious, offensive or a source of annoyance to Unit Owners or Occupants or which unreasonably interferes with the peaceful possession and proper use of the Condominium Property by any Unit Owner or Occupant. All parts of the Condominium shall be kept in a clean and sanitary condition, and no rubbish, refuse or garbage shall be allowed to accumulate and no fire hazard shall be allowed to exist in any Unit, or upon any of the Common Elements. Any Unit Owner or Occupant who shall dump or place any trash or debris upon any portion of the Condominium shall be liable to the Association for the actual cost of removal thereof.

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

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

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

5.11 Enforcement. Each Unit Owner shall comply strictly with the provisions of this Declaration, the Bylaws and the Rules and Regulations, and decisions issued pursuant thereto, and as the same may be lawfully amended from time to time. Failure to do so shall be grounds for establishment and enforcement of liens on one individual Unit, an action to recover sums due for damages, injunctive relief, foreclosure of lien, or a combination of remedies, maintainable by the Board or managing agent on behalf of the Association, or, in a proper case, by an



aggrieved Unit Owner, all as more particularly described in the Bylaws.

5.12 Liens. While the Property remains subject to this Declaration and the provisions of the Act, no liens of any nature shall arise or be created against the Common Elements, except as approved by persons entitled to cast at least eighty percent (80%) of the votes in the Association, including eighty percent (80%) of the votes allocated to Units not owned by the Declarant, except for (i) such liens as may arise or be created against the Units and their respective Allocated Interests under the provisions of the Act, and, (ii) with respect to Units and their respective Allocated Interests, title to which has not been conveyed, or which have not been leased by Declarant, the lien of any mortgage given by Declarant to secure financing for the Buildings and other improvements on the Property.

## ARTICLE VI ASSESSMENTS FOR COMMON EXPENSES

6.1. Assessment Liens. The Board has the power to levy Assessments against the Units for Common Expenses. Such assessments, together with interest, costs, and reasonable attorney's fees, shall be a lien on the Units against which they are assessed, and if any payment thereof becomes delinquent, the lien may be foreclosed and the Unit sold, or a money judgment obtained against the persons liable therefor, all as set forth in the Bylaws. The lien will be subordinate to any First Mortgage on a Unit if such Mortgage was recorded prior to the docketing of such item in the Office of the Clerk of Court. The lien will not be affected by the sale or transfer of a Unit unless a foreclosure of a First Mortgage is involved, in which case the foreclosure will extinguish the lien for any assessments that were payable before the foreclosure sale, but will not relieve any subsequent Unit Owner from paying further assessments. The Board has the power to establish two (2) levels of assessments to provide for the payment of Limited Common Elements unique to certain Units.

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

(a) The personal obligation for assessments which are delinquent at the time of transfer of a Unit shall not pass to the transferee of said Unit unless said delinquent assessments are expressly assumed by said transferee.

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

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

(d) Without releasing the transferor from any liability therefor, any unpaid portion of assessments which is not a lien under (b) above or, resulting, as provided in (c) above, from the exercise of remedies in a First Mortgage, or by foreclosure thereof or by deed, or assignment, in lieu of such foreclosure, shall be a Common Expense collectible from all Unit Owners, including the transferee under (b) above and the Institutional Lender or such other person under (c) above who acquires ownership by foreclosure or by deed, or assignment, in lieu of foreclosure.

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

6.4. Date of Commencement of Annual Assessments. After commencement of the annual assessments provided for herein shall be due in full on January 1 of each calendar year (other than the first year in which such



assessments are levied, in which case they are due immediately upon assessment), and shall be payable on a monthly basis on the first business day of each calendar month, with the monthly assessment for the month of a closing of a Unit by a buyer being prorated and the assessment for the remainder of the month of the closing being collected from said buyer at closing. The first annual assessment shall be adjusted according to the number of months then remaining in that fiscal year. The initial annual assessment for the first calendar year shall not exceed \$125.00 per year.

6.5. Working Capital Fund. A working capital fund shall be established to meet unforeseen expenditures or to purchase any additional equipment, supplies or services. Upon acquisition of record title to a Unit by an Owner other than Declarant, each Owner shall contribute to the working capital of the Association an amount equal to one month of the monthly assessment for that Unit. Such initial contributions shall not be considered as advance payments of regular assessments and shall not be refunded to a Unit Owner upon the subsequent resale of a Unit. The Declarant may not use any of the fund to defray any of its expenses, reserve contributions, or construction costs or to make up any budget deficits while it is in control of the Association (except that the Declarant will reimburse itself for funds it paid for an unsold Unit's share of the working capital funds by using funds collected from the purchaser at closing when the Unit is sold). The working capital fund shall be transferred to the Association for deposit to a segregated fund when control of the Association is transferred to the Unit Owners.

6.6 Limitations on use of Assessments. No assessment of any kind may be used for the purpose of filing or pursuing any legal action of any sort whatsoever (including but not limited to lawsuits, arbitrations, administrative proceedings, and mediations) unless such use is approved by an affirmative vote of two-thirds of the votes entitled to be cast. Such limitation shall not apply, however, and assessments may be used, for the bringing of any action to collect dues or to enforce the use restrictions set forth in this Declaration or in the Rules and Regulations promulgated by the Board, or for the defense of any action brought against the Association.

## ARTICLE VII MANAGEMENT, MAINTENANCE, REPAIRS, REPLACEMENTS, ALTERATIONS AND IMPROVEMENTS TO THE CONDOMINIUM

### 7.1. Common Elements.

(a) By the Association. Except as otherwise set forth in the Declaration or the Act, the management, replacement, maintenance, repair, alteration, and improvement of the Common Elements shall be the responsibility of the Association, and, subject to the provisions of Section 7.2 hereof, the cost thereof shall be a Common Expense to the extent not paid by Unit Owners pursuant to Section 7.1 (b) hereof. All damage caused to a Unit by any work on or to the Common Elements done by or for the Association shall be repaired by the Association, and the cost thereof shall be a Common Expense.

(b) By Unit Owners. Each Unit Owner shall pay all costs to repair and replace all portions of the Common Elements that may become damaged or destroyed by reason of his intentional acts or the intentional acts of any Occupant of his Unit. Such payment shall be made upon demand made by the Association.

### 7.2. Common Expenses Associated with Limited Common Elements or Benefitting Less Than All Units.

(a) Any Common Expense associated with the maintenance, repair, or replacement of a Limited Common Element shall be assessed against the Unit, or in equal shares to the Units, to which such Limited Common Element was allocated at the time the expense was incurred.

(b) In addition, the Association may assess any Common Expense benefitting less than all of the Units against the Units benefitted in proportion to their Common Expense Liability.

7.3. Units. Each Unit Owner shall maintain his Unit at all times in a good and clean condition, and repair and replace, at his expense, all portions of his Unit; perform his responsibilities in such manner as not to unreasonably disturb other Occupants; promptly report to the Board, or its agents, any defect or need for repairs;

and, to the extent that such expense is not covered by the proceeds of insurance carried by the Association, pay all costs to repair and replace any portion of another Unit that has become damaged or destroyed by reason of his own acts or omissions, or the acts or omissions of any Occupant of his Unit. Such payment shall be made upon demand by the Unit Owners of such other Unit. Nothing herein contained shall modify any waiver by insurance companies of rights of subrogation.

7.4. Waiver of Claims. Except only as provided in Section 7.5(a) and (b), the Association agrees that it shall make no claim against a Unit Owner or Occupant, and each Unit Owner and Occupant agrees that he shall make no claim against the Association, or employees or agents thereof, or against any manager retained by the Board, or his or its officers, directors, employees or agents, for any loss or damage to any of the Property, or to a Unit or personal property therein, even if caused by the omission or neglect of any one or more of such persons and all such claims are hereby waived and released; provided, however, that this waiver shall not apply to any such loss or damage due to intentional acts.

7.5. Right of Entry.

(a) By the Association. The Association, and any person authorized by the Association, may enter any Unit or any of the Limited Common Elements in case of any emergency or dangerous conditions or situation originating in or threatening that Unit or any of the Limited Common Elements or the Common Elements. The Association, and any person authorized by the Association, after reasonable notice to a Unit Owner or Occupant, may enter that Unit or any of the Limited Common Elements for the purposes of performing any of the Association's powers under the Act, this Declaration or the Bylaws with respect to that or any other Unit, any Limited Common Elements, or the Common Elements. Notwithstanding Section 7.4, the Association shall be responsible for the repair of any damage caused by the Association or its authorized person to the entered Unit, and the cost thereof shall be a Common Expense. All such entries shall be made and done so as to cause as little inconvenience as possible to the Unit Owner and Occupant of the entered Unit or any portion of the Limited Common Elements allocated to the Unit Owner.

(b) By Unit Owners. Each Unit Owner and Occupant shall allow other Unit owners and Occupants, and their representatives, to enter his Unit, or Limited Common Elements allocated to his Unit, when reasonably necessary for the purpose of altering, maintaining, repairing or replacing the Unit, or performing the duties and obligations under the Act, this Declaration or the Bylaws, of the Unit Owner or Occupant making such entry, provided that requests for entry are made in advance and that such entry is at a time convenient to the Unit Owner or Occupant whose Unit or Limited Common Element is to be entered. In case of an emergency or dangerous condition or situation, such right of entry shall be immediate. Notwithstanding Section 7.4, the person making such entry shall be responsible for repair of any damage caused by such person to the entered Unit or Limited Common Element.

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

## ARTICLE VIII INSURANCE

8.1. General. The Board shall obtain and maintain at all times, insurance of the type and kind

provided in this Declaration and the Bylaws, and including insurance for such other risks, of a similar or dissimilar nature, as are or shall hereafter customarily be covered with respect to other condominium properties similar in construction, design and use, all in not less than the amounts provided in this Declaration and the Bylaws.

8.2. Responsibility For Obtaining Coverage. The Board shall have the authority to obtain, and shall obtain, insurance policies upon the Property in the name of the Association for the benefit of the Unit Owners and their First Mortgagees as their interests may appear, and provision shall be made for the issuance of the renewals thereof. Certificates of insurance and/or policies shall be furnished to each Unit Owner and his First Mortgagee upon request.

8.3. Types of Coverage. The Board shall make every effort to secure insurance policies that will provide the following minimum coverages:

(a) Casualty Insurance. The Association shall maintain, to the extent available, casualty insurance upon the Buildings and Common Elements. Such insurance shall be in an amount equal to not less than one hundred percent (100%) of the full insurable value of the Property to the unfinished walls of a Unit, but including any fixtures, appliances, improvements and alterations that are a part of the Building, on a replacement cost basis exclusive of land, excavation, foundations and other items normally excluded from property policies, and shall insure against such risks and contain such provisions as the Board from time to time shall determine, but at a minimum shall conform in all respects to the requirements of the Act, and shall provide that, notwithstanding any provision thereof that gives the insurer an election to restore damage in lieu of making a cash settlement, such option shall not be exercisable if such restoration is prohibited pursuant to Section 47C-3-113(h) of the Act.

(b) Public Liability. The Association shall maintain to the extent obtainable, public liability insurance in such limits as the Board may from time to time determine, which shall not be less than One Million Dollars (\$1,000,000.00) per occurrence for death, bodily injury and property damage, covering the Association, each member of the Board, the managing agent, if any, and each Unit Owner, with respect to his liability arising out of the ownership, maintenance, repair, or use of the Common Elements.

The coverage obtained by the Board must provide for at least 30 days written notice to the Association and to any holder of a First Mortgage on an individual Unit before the insurer can cancel or substantially modify it.

(c) Fidelity Coverage. Fidelity insurance shall be maintained for all officers, directors, employees, and/or the managing agent of the Association and all other persons handling, or responsible for, funds of, or administered by, the Association. Such fidelity bonds shall name the Association as an obligee and shall be in an amount not less than a sum equal to one and one half times estimated annual operating expenses and reserves. The bonds shall contain waivers by the issuers of the bonds of all defenses based upon the exclusion of persons serving without compensation from the definition of "employees" or similar terms or expressions.

(d) Other. The Board shall obtain such other insurance coverages, as the Board shall determine from time to time to be desirable.

8.4. Premiums To Be Common Expense. Premiums upon insurance policies purchased by the Board shall be paid for by the Board and charged as a Common Expense.

8.5. Policy Provisions. The Board shall use its best efforts to secure insurance policies from a carrier authorized to transact business in North Carolina and which is generally acceptable to private institutional mortgage investors for projects similar in construction, location and use, which will provide for the following:

(a) The master policy on the Property cannot be canceled, invalidated or suspended on account of the conduct of any one or more of the individual Owners or Occupants.

(b) The master policy on the Property cannot be canceled, invalidated or suspended on account of the conduct of any officer or employee of the Association, or managing agent, without prior demand in

writing that the Board or managing agent cure the defect.

(c) Any "no other insurance" clause in the master policy on the Property excludes individual Unit Owners' policies from consideration.

(d) Such policies may not be canceled or substantially modified without at least 30 days prior written notice to all insureds (including the Association and all Unit Owners), and to First Mortgagees.

(e) A waiver of subrogation by the insurer as to any claims against the Association, any officer, director, agent or employee of the Association, Unit Owners and members of their household and their employees, agents, tenants and invitees.

(f) A provision that, notwithstanding any provision thereof that gives the insurer an election to restore damage in lieu of making a cash settlement, such option shall not be exercisable if such restoration is prohibited pursuant to Section 47C-3-113(h) of the Act.

8.6. Insurance Trustee. The Board may engage and pay as a Common Expense, any appropriate person to act as an insurance trustee to receive and disburse insurance proceeds upon such terms as the Board shall determine, consistent with the provisions of the Act and this Declaration.

8.7. Insurance Unavailable. If the insurance described in Section 8.3 is not reasonably available, the Association shall promptly cause notice of such fact to be hand-delivered or sent prepaid by United States mail to all Unit Owners.

8.8. Individual Policy for Unit Owners. Each Unit Owner shall obtain insurance, at his own expense, affording personal property, additional living expense, condominium assessment, personal liability, and any other coverage obtainable, to the extent and in the amounts such Unit Owner deems necessary to protect his own interests; provided that such policy shall insure one hundred percent (100%) of the cost of the improvements and betterments of the Unit, including, but not limited to the wall coverings, paint, carpet, appliances, cabinets, plumbing fixtures and heating and air conditioning systems. Provided further that any such insurance shall contain waivers pursuant to Section 7.4 and shall provide that it is without contribution as against the insurance purchased by the Association. If a casualty loss is sustained and there is a reduction in the amount of the proceeds that would otherwise be payable on the insurance purchased by the Association due to the proration of insurance purchased by a Unit Owner under this Section, such Unit Owner shall be liable to the Association to the extent of such reduction and shall pay the amount of such reduction to the Association upon demand, and assign the proceeds of his insurance, to the extent of such reduction, to the Association.

#### ARTICLE IX CASUALTY DAMAGE

9.1. Duty to Repair. Except as provided in Section 9.2, in the event of damage to or destruction of any Building and/or the Common Elements as a result of fire or other casualty, the Board shall arrange for the prompt repair and restoration of the Buildings and/or the Common Elements (including any damaged Unit, but not including any decoration or coverings for walls, ceilings or floors, or other furniture, finishing, fixtures or equipment in the Unit, or a Unit Owner's or Occupants personal property, furniture, fixtures, or equipment), and the Board shall disburse the proceeds of all insurance policies to the contractors engaged in such repair and restoration in appropriate progress payments. Any cost for such repair and restoration in excess of the insurance proceeds shall constitute a Common Expense. Any surplus insurance proceeds remaining after repairs have been completed shall be treated as a common surplus. All proceeds of insurance shall be used and applied in accordance with the provisions of Section 47C-3-113(e) and (h) of the Act. Any reconstruction or repair shall be in accordance with the plans and specifications of the original Buildings and/or Common Elements or according to plans and specifications approved by the Board.

9.2. Disposition of Insurance Proceeds in the Event Casualty Damage Not Repaired. The provisions of Section 9.1 shall apply to any portion of the Condominium for which insurance is required under Article VIII and

Section 47C-3-113 of the Act unless (i) the Condominium is terminated, (ii) repair or replacement would be illegal under any State or local health or safety statute or ordinance, or (iii) the Unit Owners decide not to rebuild by an 80% vote, including 100% approval of Unit Owners whose Units are not to be rebuilt or Unit Owners of Units to which are allocated Limited Common Elements not to be rebuilt. The cost of repair or replacement in excess of insurance proceeds and reserves is a Common Expense. If the entire Condominium is not repaired or replaced, (i) the insurance proceeds attributable to the damaged Common Elements should be used to restore the damaged area to a condition compatible with the remainder of the Condominium, (ii) the insurance proceeds attributable to Units and Limited Common Elements which are not rebuilt shall be distributed to the Owners of those Units and the Owners of the Units to which those Limited Common Elements were allocated or to lien holders, as their interest may appear, and (iii) the remainder of the proceeds shall be distributed to all the Unit Owners or lien holders as their interest may appear, in proportion to their Allocated Interests. If the Unit Owners vote not to rebuild any Unit, that Unit's Allocated Interests are automatically reallocated upon the vote as if the Unit had been condemned under Section 47C-1-107(a) of the Act, and the Association promptly shall prepare, execute and record an amendment to this Declaration reflecting the reallocations. Notwithstanding the provisions of this Section 9.2, Section 47C-2-118 of the Act shall govern the distribution of insurance proceeds if the Condominium is terminated.

**ARTICLE X  
TERMINATION OF THE CONDOMINIUM;  
CONDEMNATION; AMENDMENT OF THE DECLARATION**

10.1. Termination. The Condominium may be terminated only in strict compliance with Section 47C-2-118 of the Act.

10.2. Condemnation. In the event of a taking by eminent domain, or by a conveyance in lieu thereof, of all or any part of the Property, the awards paid on account thereof shall be applied in accordance with Section 47C-1-107 of the Act.

10.3. Amendment. This Declaration may be amended only in compliance with the Act, including, without limitation, Sections 47C-2-105 and 47C-2-117 of the Act, except that no amendment altering or impairing Special Declarant Rights may be made without the written consent of Declarant.

**ARTICLE XI  
MORTGAGEE PROTECTION**

11. 1. Introduction. This Article establishes certain standards and covenants which are for the benefit of the holders, insurers and guarantors of certain mortgages and others as identified in this Article XI. In the event of conflict between the provisions of this Article and provisions of any other portion of the Condominium Documents, this Article will control. In the event that the Act shall for any given act or consent contain a greater or more stringent requirement, the Act will control.

11.2. Notice of Actions. The Association will give timely written notice by registered or certified mail, return receipt requested, to each Eligible Mortgage Holder, and each Unit Owner hereby consents to and authorizes such notice of:

- (a) Any condemnation loss or any casualty loss which affects a material portion of the Condominium or any Unit in which there is a First Mortgage held by such Eligible First Mortgagee.
- (b) Any delinquency in the payment of Assessments owed by an Owner whose Unit is subject to a First Mortgage held by such Eligible First Mortgagee, which remains uncured for a period of 60 days;
- (c) Any lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association;

(d) Any proposed action which would require the consent of a specified percentage of Eligible First Mortgagees as specified in Section 11.3, which notice shall be sent by registered or certified mail, return receipt requested; and

(e) Any judgment rendered against the Association.

11.3 Consent Required. This section 11.3 shall be effective only if, at the time this Section would apply, at least one Unit is subject to mortgage financing.

(a) Document Changes. Notwithstanding any lower requirement permitted by the Declaration or the Act, no amendment of the Declaration or Bylaws by the Association which materially changes any of the following may be effected without the vote of at least 67% of the Unit Owners (or any greater Unit Owner Vote required in the Act), unless such rights are reserved to the Declarant as Special Declarant Rights in the Condominium Documents, and until approved in writing by Eligible Mortgage Holders representing at least 51% of the votes allocated to Units subject to First Mortgages held by Eligible Mortgage Holders:

- (i) Voting rights;
- (ii) Assessments, assessment liens or subordination of such liens;
- (iii) Reserves for maintenance, repair and replacement of Common Elements;
- (iv) Responsibility for maintenance and repair of the Condominium;
- (v) Reallocation of interests in the Common Elements or Limited Common Elements, or rights to their use;
- (vi) Redefinition of any Unit boundaries;
- (vii) Convertibility of Units into Common Elements or vice versa;
- (viii) Expansion or contraction of the Condominium or the addition, annexation or withdrawal of property to or from the Condominium, except as provided elsewhere;
- (ix) Hazard or fidelity insurance requirements;
- (x) Imposition of any restrictions on the leasing of Units;
- (xi) Imposition of any restrictions on a Unit Owner's right to sell or transfer his or her Unit;
- (xii) A decision by the Association to establish selfmanagement if professional management had been required previously by the Condominium Documents or by an Eligible Mortgage Holder;
- (xiii) Restoration or repair of the Condominium (after damage or partial condemnation) in a manner other than that specified in the Condominium Documents;
- (xiv) Any action to terminate the legal status of the Condominium after substantial destruction or condemnation occurs; or
- (xv) Any provisions that expressly benefit first mortgage holders, or insurers or guarantors of first mortgages.

An addition or amendment to the Declaration or Bylaws shall not be considered material if it is for the

purpose of correcting technical or typographical errors, or for clarification only.

(b) **Actions.** Notwithstanding any lower requirement permitted by the Declaration or the Act, the Association may not take any of the following actions, other than rights reserved to the Declarant as Special Declarant Rights, without the approval of at least 51 % of the Votes of the Eligible Mortgagees of Units that are subject to mortgages of the Eligible mortgagees or such higher percentage as set forth herein:

- (i) An amendment to the Declaration which authorizes the conveyance or encumbrance of the Common Elements or any portion thereof (as to which a 67% Eligible Mortgage Holder approval is required). (The granting of easement for public utilities or for other public purposes consistent with the intended use of the Common Elements by the Condominium will not be deemed a conveyance or encumbrance within the meaning of this clause);
- (ii) The establishment of self-management when professional management had been required previously by the documents or by an Eligible Mortgagee;
- (iii) The restoration or repair of the Property (after a hazard damage or partial condemnation) in a manner other than that specified in the Condominium Documents;
- (ix) Termination of the Condominium for reasons other than substantial destruction or termination (as to which a 67% Eligible Mortgage Holder approval is required);
- (v) The alteration of any partition or creation of any aperture between adjoining Units (when Unit boundaries are not otherwise being affected), in which case only the owners of Units affected and Eligible Mortgage Holders of those Units need approve the action;
- (vi) The merger of this Condominium with any other condominium, in which case the approval of 67% of the Eligible Mortgage Holders is required;
- (vii) Any action taken not to repair or replace the Property;

(c) The Association may not change the period for collection of regularly budgeted Common Expense Assessments to other than monthly without the consent of all Eligible Mortgage Holders.

(d) The Association shall provide notice, including the text of the proposed action, mailed by certified or registered mail, by return receipt required, to an Eligible Mortgage Holder. Failure to respond within 30 days of receipt of notice of the action shall be deemed consent given under this subsection.

11.4 **Notice.** Each First Mortgagee and each insurer or guarantor of a First Mortgage, upon written request stating its name and address and describing the Unit encumbered by the First Mortgage, held, insured or guaranteed, shall be entitled to timely written notification by the Association of (i) any proposed action which requires consent of a specified percentage of Eligible Mortgage Holders, (ii) any condemnation or casualty loss that affects either a material portion of the Condominium or the Unit securing its First Mortgage, (iii) any 60 day delinquency in the payment of assessments or charges owed by the Unit Owner of the Unit on which the First Mortgagee holds a First Mortgage; or (iv) any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association. Each First Mortgagee who has requested the Association to notify it of any proposed action that requires the consent of a specified percentage of Eligible Mortgage Holders shall be considered an "Eligible Mortgage Holder."

11.5. **Inspection of Books.** The Association must maintain current copies of the Declaration, Bylaws, Rules, and Regulations, books, records and financial statements. The Association will permit any Eligible Mortgage Holder to inspect the books and records of the Association during normal business hours.

11.6. Enforcement. The provisions of this Article are for the benefit of Eligible Mortgage Holders and their successors, and may be enforced by any of them by any available means, at law or in equity.

## ARTICLE XII PROVISIONS RELATING TO THE ASSOCIATION

12.1. Creation of Association. Except as otherwise provided for herein, in order to provide for the maintenance, repair, replacement, administration, and operation of the property, Declarant has created an association to be known as "The Condominiums at Kinderton Village Owners Association, Inc." Membership therein shall be composed of all of the Unit Owners of the Units of the Condominium. Each Unit Owner of a Unit shall be a member of the Association, but membership shall be automatically terminated when such Person ceases to be a Unit Owner, and will be transferred to the new Unit Owner.

12.2. Bylaws. The Association shall be governed in accordance with and as prescribed by the Bylaws, a true copy of which is attached hereto as **Exhibit E**.

12.3. All Units Bound. Declarant, by this Declaration, and all Unit Owners, by the acceptance of their deeds, covenant and agree to be bound by the conditions, restrictions and obligations contained in the Bylaws and the provisions of this Declaration.

12.4. Duties and Powers. The duties and powers of the Association shall be those set forth in this Declaration, and the Articles of Incorporation and Bylaws of the Association, including the power and authority to levy assessments as provided for in the Bylaws.

12.5 Declarant Control Period. The provisions of Article III of the Bylaws concerning the Declarant Control Period are made a part of this Declaration and are incorporated herein by reference as if fully set out herein.

## ARTICLE XIII GENERAL PROVISIONS

13.1. Conflict with the Act. Should any of the terms, conditions, provisions, paragraphs, or clauses of this Declaration conflict with any provisions of the Act, the provisions of the Act shall control unless the Act permits the Declaration to vary the Act, in which event the Declaration shall control.

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

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

13.4. Exhibits. The attached. Exhibits A, A-1, B, C, D, E, F and G are incorporated in their entirety into this Declaration by reference.

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

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

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

IN WITNESS WHEREOF, Declarant hereby executes this Declaration by and through its authorized



representatives on the day and year first above written.

MULVANEY HOMES, INC., a  
North Carolina corporation

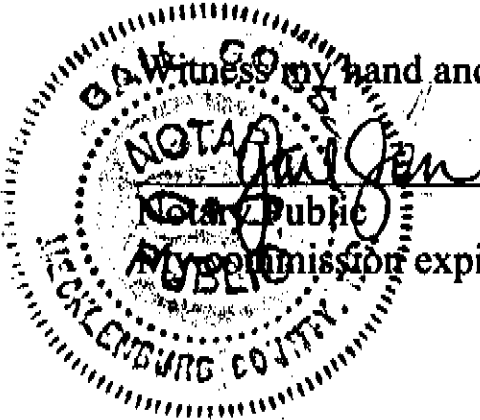
By: [Signature]  
Its: VICE PRESIDENT

STATE OF NORTH CAROLINA

COUNTY OF MECKLENBURG

I, GAIL GOSS, a Notary Public of the County and State aforesaid,  
certify that GARY SHARKEY, personally came before me this day and  
acknowledged that he is VICE President of Mulvaney Homes, Inc., a North Carolina corporation,  
and that he, as VICE President, being authorized to do so, executed the foregoing on behalf of the  
corporation.

Witness my hand and official stamp or seal this 23 day of December, 2002.



My commission expires 2-27-06

NORTH CAROLINA, DAVIE COUNTY

The foregoing certificate of Gail Goss Notary  
Public of Mecklenburg Cty, NC is certified to be correct.  
This instrument was presented for registration on  
this the 7th day of January, 2003.

M. BRENT SHOAF, REGISTER OF DEEDS

BY: Catherine E. McClamrock  
DEPUTY

**EXHIBIT A  
TO DECLARATION OF CONDOMINIUM  
FOR THE CONDOMINIUMS AT KINDERTON VILLAGE**

BEING all of Tract "K" as shown on Final Plat of Kinderton Village Phase 1C-2 recorded in Plat Book 7 at Page 216 in the Davie County Public Registry and being all of Lots 1 and 15 as shown on Final Plat of Kinderton Village Condominiums Phase 1 & Lakeside Crossing recorded in Plat Book 7 at Page 234 in the Davie County Public Registry.

**EXHIBIT A-1  
TO DECLARATION OF CONDOMINIUM  
FOR THE CONDOMINIUMS AT KINDERTON VILLAGE**

**ADDITIONAL PROPERTY TO BE ADDED TO THE CONDOMINIUMS  
AT KINDERTON VILLAGE**

BEING all of Tract "J" as shown on Final Plat of Kinderton Village Phase 1C-2 recorded in Plat Book 7 at Page 216 and all of Lots 2 - 14 of Final Plat of Kinderton Condominiums Phase 1 & Lakeside Crossing recorded in Plat Book 7 at Page 234 in the Davie County Public Registry.

Lying and being in Farmington Township, Davie County, North Carolina and being more particularly described as follows:

BEGINNING at a point in the easterly margin of the private drive known as Lakeside Crossing, marking the northwesternmost corner of Lot 196 of Kinderton Village Phase 1C-2 as shown on map recorded in Plat Book 7 at Page 216 in the Davie County Public Registry and running along the easterly margin of the aforesaid private drive known as Lakeside Crossing, the following five (5) courses and distances: (1) with the arc of a circular curve to the right having a radius of 94.00 feet, an arc length of 9.66 feet and a chord bearing and distance of North 06-46-49 East 9.66 feet to a point, (2) North 07-20-26 West 36.66 to a point, (3) North 83-36-54 West 4.00 feet to a point, (4) North 07-20-26 West 114.22 feet to a point and (5) with the arc of a circular curve to the right having a radius of 10.00 feet and an arc length of 15.47 feet to a point in the southerly margin of the right-of-way shown as Town Park Drive; thence running along the southerly margin of TownPark Drive, the following two (2) courses and distances: (1) with the arc of a circular curve to the left having a radius of 1376.00 feet and an arc length of 205.43 feet to a point and (2) with the arc of a circular curve to the right having a radius of 10.00 feet and an arc length of 15.47 feet to a point in the westerly margin of a future street; thence running along the westerly margin of a future street, the following three (3) courses and distances: (1) South 03-57-01 East 114.15 feet to a point, (2) South 86-02-59 West 4.00 feet to a point and (3) South 03-57-01 East 50.60 feet to a point; thence with a new line running South 86-02-59 West 116.88 feet to a point; thence North 00-53-50 East 6.89 feet to a point; thence North 88-49-35 West 20.00 feet to a point; thence North 83-46-47 West 114.52 feet to the Point and Place of BEGINNING and being shown as Future Tract of Kinderton Village Phase 2 Condominiums on Site Plan Tracts East of Lake Crossing prepared by Stimmel Associates, P.A. dated October 30, 2002 for a more particular description of the property.

BEGINNING at a point in the easterly margin of a future street and being adjacent to the above-described future tract and running along the easterly margin of the aforesaid future street, the following four (4) courses and distances: (1) North 03-57-01 West 61.72 feet to a point, (2) South 85-05-38 West 4.00 feet to a point; (3) North 03-57-01 West 114.28 feet to a point and (4) with the arc of a circular curve to the right having a radius of 10.00 feet and an arc length of 15.48 feet to a point along the southerly margin of the right-of-way of TownPark Drive; thence running along the southerly margin of the aforesaid right-of-way known as TownPark Drive, the following two (2) courses and distances: (1) with the arc of a circular curve to the left having a radius of 1370.04 feet and an arc length of 204.38 feet to a point and (2) with the arc of circular curve to the right having a radius of 10.00 feet and an arc length of 14.47 feet to a point in the westerly margin of a future street; thence running along the westerly margin of a future street, the following three (3) courses and distances: (1) with the arc of a circular curve to the right having a radius of 727.00 feet and an arc length of 115.40 feet to a point, (2) South 75-40-06 West 4.00 feet to a point and (3) with the arc of a circular curve to the right having a radius of 723.00 feet and an arc length of 55.76 feet to a point; thence running with a new line South 82-28-07 West 113.87 feet to a point; thence South 06-24-36 East 19.96 feet to a point; thence South 84-42-41 West 20.00 feet to a point; thence South 84-42-41 West 113.90 feet to the Point and Place of BEGINNING and being identified as Future Tract of

Kinderton Village Phase 2 Condominiums on Site Plan Tracts East of Lakeside Crossing prepared by Stimmel Associates, P.A. dated October 30, 2002 for a more particular description of the property.

BEGINNING at a point in the easterly margin of the right-of-way known as Fieldstone Drive, being located across Fieldstone Drive from Tract J as shown on Kinderton Village Phase 1C-2 as shown on a map recorded in Plat Book 7 at Page 216 in the Davie County Public Registry and running from said Beginning Point, North 79-35-48 East 114.59 feet to a point; thence North 79-35-37 East 20.00 feet to a point; thence North 10-44-38 West 8.62 feet to a point; thence North 79-26-53 East 125.81 feet to a point in the westerly margin of a future street; thence running along the westerly margin of a future street, the following five (5) courses and distances: (1) with the arc of a circular curve to the right having a radius of 1027.00 feet and an arc length of 53.00 feet to a point, (2) North 61-06-32 East 4.05 feet to a point, (3) with the arc of a circular curve to the right having a radius of 1023.00 feet and an arc length of 77.49 feet to a point, (4) South 24-28-57 East 37.88 feet to a point and (5) with the arc of a circular curve to the right having a radius of 10.00 feet and an arc length of 14.98 feet to a point in the northerly margin of the right-of-way known as Maple Wood Lane (formerly shown as Oak Wind Drive); thence running along the northerly margin of Maple Wood Lane, South 61-21-04 West 19.94 feet to a point; thence with the arc of a circular curve to the right having a radius of 494.00 feet and an arc length of 289.86 feet to a point; thence North 84-13-05 West 18.71 feet to a point; thence with the arc of a circular curve to the right having a radius of 10.00 feet and an arc length of 15.52 feet to a point in the easterly margin of the right-of-way known as Fieldstone Drive; thence running along the easterly margin of the right-of-way known as Fieldstone Drive, the following three (3) courses and distances: (1) North 04-41-26 East 114.21 feet to a point, (2) South 84-12-26 East 3.10 feet to a point and (3) with the arc of circular curve to the left having a radius of 377.00 feet and an arc length of 48.52 feet to the Point and Place of BEGINNING and being identified as Future Tract of Kinderton Village Phase 2 Condominiums on Site Plan Tracts East of Lakeside Crossing prepared by Stimmel Associates, P.A. dated October 30, 2002 for a more particular description of the property.

BEGINNING at a point in the southerly margin of Maple Wood Lane (formerly shown as Oak Wind Drive) and running North 61-06-32 East 125.14 feet to a point; thence South 24-27-44 East 240.47 feet to a point in the northerly margin of the right-of-way known as Town Park Drive; thence running along the northerly margin of the right-of-way known as Town Park Drive, South 75-00-46 West 127.31 feet to a point; thence with the arc of a circular curve to the right having a radius of 10.00 feet and an arc length of 14.05 feet to a point in the easterly margin of a Future Street; thence running along the easterly margin of a Future Street, the following two (2) courses and distances: (1) North 24-28-57 West 190.02 feet to a point and (2) with the arc of a circular curve to the right having a radius of 10.00 feet and an arc length of 14.94 feet to the Point and Place of BEGINNING and being identified as a Future Tract of Kinderton Village Phase 2 Condominiums on Site Plan Tracts East of Lakeside Crossing prepared by Stimmel Associates, P.A., dated October 30, 2002 for a more particular description of the property.

BEGINNING at a point marking the intersection of the easterly margin of the right-of-way known as Lakeside Crossing and the northerly margin of the variable right-of-way known as Interstate 40 and running from said Beginning Point along the easterly margin of the aforesaid right-of-way known as Lakeside Crossing, the following two (2) courses and distances: (1) with the arc of a circular curve to the right having a radius of 450.00 feet and an arc length of 177.25 feet and a chord bearing and distance of North 06-27-41 West 176.10 feet to a point and (2) North 04-49-21 East 169.89 feet to a point; thence with a new line North 66-15-53 East 167.55 feet to a point; thence North 23-44-07 West 124.89 feet to a point; thence North 64-32-16 East 256.28 feet to a point; thence South 74-54-01 East 48.57 feet to a point; thence South 23-44-07 East 102.13 feet to a point; thence North 66-15-53 East 126.87 feet to a point; thence South 74-54-01 East 4.30 feet to a point; thence South 23-44-07 East 81.80 feet to a point; thence North 66-15-53 East 116.24 feet to a point; thence South 85-14-23 East 109.88 feet to a point;

thence North 72-23-41 East 197.18 feet to a point; thence South 38-57-23 East 162.76 feet to a point in the northerly margin of the aforesaid variable right-of-way known as Interstate 40; thence running along the northerly margin of the aforesaid variable right-of-way known as Interstate 40, the following three (3) courses and distances: (1) with the arc of a circular curve to the right having a radius of 11329.20 feet, an arc length of 1167.03 feet and a chord bearing and distance of South 66-07-13 West 1166.52 feet to a point, (2) North 20-55-43 West 10.00 feet to a point and (3) with the arc of circular curve to the right having a radius of 11319.20 feet, an arc length of 11.39 feet and a chord bearing and distance of South 69-06-01 West 11.39 feet to the Point and Place of BEGINNING and being shown as Phase 2 Condo Site Project No. 01-03 prepared by Stimmell Associates, P.A. dated November 5, 2002 for a more particular description of said property.

**EXHIBIT B  
TO DECLARATION OF CONDOMINIUM  
FOR THE CONDOMINIUMS AT KINDERTON VILLAGE**

**TITLE EXCEPTIONS**

1. Ad valorem property taxes not yet due and payable.
2. Matters to be revealed on a current survey of the property.
3. Easement(s) to State Highway Commission recorded in Book 60, page 117; Book 67, Page 344; Book 67, Page 454; Book 85, Page 197; Book 70, Page 507; and Book 85, Page 312, Davie County Registry.
4. Easement to Davie County recorded in Book 97, Page 325, Davie County Registry.
5. Easement to NC Board of Transportation recorded in Book 98, Page 293, Davie County Registry.
6. Right-of-way Agreement/Distribution to Piedmont Natural Gas Company recorded in Book 327, Pages 91 and 93; and Book 346, Page 532, Davie County Registry.
7. Drainage Easement to Burnfam Limited Partnership and Talbert Group, LLC recorded in Book 394, Page 991, Davie County Registry.
8. Private sanitary sewer easement to Burnfam Limited Partnership and Talbert Group, LLC recorded in Book 395, Page 1, Davie County Registry.
9. Easement to Piedmont Natural Gas Company, Inc. recorded in Book 321, Page 91, Davie County Registry.

**EXHIBIT C  
TO DECLARATION OF  
THE CONDOMINIUMS AT KINDERTON VILLAGE  
(PLATS AND PLANS)**

**Please refer to plats and plans recorded as follows:**

The plat of survey for THE CONDOMINIUMS AT KINDERTON VILLAGE dated 9-16-02, prepared by Triad Land Surveying PC, entitled "THE CONDOMINIUMS AT KINDERTON VILLAGE Plat Phase 1 Buildings: Multi-family building" and consisting of one (1) sheet(s), which was attached to this Declaration at the time it was filed for record is duly filed in the Office of the Register of Deeds for Davie County, North Carolina in Condominium Unit Ownership File No.           . Said survey is incorporated herein by reference as though fully set out herein.  
Book 8 Page 2

## EXHIBIT D

TO DECLARATION OF  
THE CONDOMINIUMS AT KINDERTON VILLAGE

| Unit Number                | Heated Square<br>Footage<br>(Based upon Initial<br>Plans & rounded to the<br>nearest whole foot) | Common Element<br>Interest Percentage | Projected Monthly<br>Assessment<br>(Based upon preliminary<br>operating budget<br>estimate of \$<br>per month) |
|----------------------------|--|---------------------------------------|--|
| 292 Townpark Drive<br>#101 | 861  | 3.0668                                | 105  |
| 292 Townpark Drive<br>#102 | 861  | 3.0668                                | 105  |
| 292 Townpark Drive<br>#201 | 861  | 3.0668                                | 105  |
| 292 Townpark Drive<br>#202 | 970  | 3.4551                                | 105  |
| 292 Townpark Drive<br>#301 | 918  | 3.2699                                | 105  |
| 292 Townpark Drive<br>#302 | 971  | 3.4587                                | 105  |
| 298 Townpark Drive<br>#101 | 861  | 3.0668                                | 105  |
| 298 Townpark Drive<br>#102 | 861  | 3.0668                                | 105  |
| 298 Townpark Drive<br>#201 | 861  | 3.0668                                | 105  |
| 298 Townpark Drive<br>#202 | 970  | 3.4551                                | 105  |
| 298 Townpark Drive<br>#301 | 918  | 3.2699                                | 105  |
| 298 Townpark Drive<br>#302 | 971  | 3.4587                                | 105  |
| 302 Townpark Drive<br>#101 | 861  | 3.0668                                | 105  |
| 302 Townpark Drive<br>#102 | 861  | 3.0668                                | 105  |
| 302 Townpark Drive<br>#201 | 861  | 3.0668                                | 105  |
| 302 Townpark Drive<br>#202 | 970  | 3.4551                                | 105  |
| 302 Townpark Drive<br>#301 | 918  | 3.2699                                | 105  |
| 302 Townpark Drive<br>#302 | 971  | 3.4587                                | 105  |



|                           |      |               |     |
|---------------------------|------|---------------|-----|
| 132 Pinewood Lane<br>#101 | 1600 | 5.6992        | 125 |
| 132 Pinewood Lane<br>#102 | 1600 | 5.6992        | 125 |
| 132 Pinewood Lane<br>#103 | 1600 | 5.6992        | 125 |
| 132 Pinewood Lane<br>#104 | 1600 | 5.6992        | 125 |
| 127 Pinewood Lane<br>#101 | 1337 | 4.7624        | 125 |
| 127 Pinewood Lane<br>#102 | 1337 | 4.7624        | 125 |
| 127 Pinewood Lane<br>#103 | 1337 | 4.7624        | 125 |
| 127 Pinewood Lane<br>#104 | 1337 | <u>4.7624</u> | 125 |
|                           |      | TOTAL 100%    |     |

**EXHIBIT E  
TO DECLARATION OF  
THE CONDOMINIUMS AT KINDERTON VILLAGE**

**BYLAWS  
OF  
THE CONDOMINIUMS AT KINDERTON VILLAGE  
OWNERS ASSOCIATION, INC.**

**ARTICLE I  
PLAN OF CONDOMINIUM**

- 1.1. Unit Ownership. The property located in Davie County, State of North Carolina, and more particularly described in the Declaration of The Condominiums At Kinderton Village (the "Declaration"), has been submitted to the provisions of the North Carolina Condominium Act (the "Act") by instrument recorded in the Office of the Register of Deeds for Davie County, North Carolina, simultaneously herewith, and shall be known as The Condominiums At Kinderton Village (the "Condominium").
- 1.2. Applicability of Bylaws. The provisions of these Bylaws are applicable to the Property of the Condominium, and to the use and occupancy thereof including all additional phases which may be added thereto.
- 1.3. Persons Bound. All present and future Owners, mortgagees, Lessees and Occupants of Units and their employees, and any other persons who may use the facilities of the Property in any manner are subject to the Declaration, these Bylaws and any Rules and Regulations made pursuant hereto, and any amendment to these Bylaws or the Declaration upon the same being passed and recorded in the manner set forth in the Condominium Documents. The acceptance of a deed of conveyance or the entering into of a lease or the act of occupancy of a Unit shall constitute an agreement that these Bylaws (and any Rules and Regulations made pursuant hereto) and the provisions of the Declaration, as they may be amended from time to time, are accepted, ratified and will be complied with.
- 1.4. Definitions. The words, phrases and terms listed in these Bylaws shall have the meanings as set forth in the Declaration, to which these Bylaws are attached, unless the context clearly indicates a different meaning therefor.

**ARTICLE II  
UNIT OWNERS**

- 2.1. Name and Nature of Association. The Condominiums At Kinderton Village Owners Association, Inc. (the "Association") shall be a nonprofit corporation, organized under the laws of the State of North Carolina, and the membership shall be comprised of all of the Unit Owners as herein provided, which Association shall be governed by the Board as herein provided.
- 2.2. Place of Meetings. All meetings of the Association shall be held at the Property, or at such other place, either within or without the State of North Carolina, as shall be designated in a notice of the meeting.
- 2.3. Annual. An annual meeting of the Unit Owners shall be held at 7:00 o'clock p.m. on the first Monday in May of each year, if not a legal holiday, and if a legal holiday, then at the same time on the next business day following the legal holiday, for the purpose of electing members of the Board and for the transaction of such other business as may be properly brought before the meeting.
- 2.4. Substitute Annual Meetings. If the annual meeting shall not be held on the day designated by the Bylaws, a substitute annual meeting may be called in accordance with the provisions of Section 2.5 of this Article. A meeting so called shall be designated and treated for all purposes as the annual meeting.

2.5. Special Meeting. Special meetings of the Unit Owners may be called at any time by the President, a majority of the Board, or upon the written request of the Unit Owners owning at least 20% in Allocated Interest in the Common Elements exclusive of those Units held by the Declarant.

2.6. Notice of Meetings. Written or printed notice stating the place, day and hour of any meeting shall be delivered or mailed not less than 10 days nor more than 50 days prior to the date thereof, either personally or by postage prepaid mail, at the direction of the Board, the President, or Unit Owners calling the meeting, to each person entitled to vote at such meeting, and, to all Eligible Mortgage Holders so requesting under the provisions of Article XI of the Declaration, who may request a representative to attend the meeting of Unit Owners.

The notice of any meeting must state the time and place of the meeting and the items on the agenda, including the general nature of any proposed amendment to the Declaration or these Bylaws, and budget changes, and any proposal to remove Board members or officers.

When a meeting is adjourned for less than 30 days in any one adjournment it is not necessary to give any notice of the adjourned meeting, other than by announcement at the meeting at which the adjournment is effective.

2.7. Quorum. The presence in person or by proxy at any meeting of the Voting Members (as defined in Section 2.8 of this Article) having 50% of the total votes which may be cast for election of the Board shall constitute a quorum. If there is no quorum at the opening of the meeting of Unit Owners, such meeting may be adjourned from time to time by the vote of a majority of the Voting Members present, either in person or by proxy; and at any adjourned meeting the quorum requirement shall be reduced by 50% of the original quorum requirement and if such quorum is present, any business may be transacted which might have been transacted at the original meeting.

The Voting Members at a meeting at which a quorum is present may continue to do business until adjournment, notwithstanding the withdrawal of enough Voting Members to leave less than a quorum.

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

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

2.10. Proxies. The Voting Members may vote either in person or by agents duly authorized by written proxy executed by such Unit Owner or his duly authorized attorney in fact. A proxy shall be valid only for the particular meeting designated therein, unless the person executing it specifies therein the length of time for which it is to continue in force, which time shall not extend beyond one year 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 dated and filed with the Secretary or duly acting Secretary of the Association, either during or prior to the meeting in question. A proxy is void if it is not dated.

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

2.12. Informal Action by Unit Owners. Any action which may be taken at a meeting of the Association may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the Voting Members and filed with the Secretary of the Association to be kept in the Association's minute book.

**ARTICLE III  
EXECUTIVE BOARD**

3.1. Number. The business and property of the Condominium shall be managed and directed by the Executive Board (the "Board"), composed of three persons, or by such executive committees as the Board may establish pursuant to the Bylaws. The size of the Board may be increased or decreased from time to time upon the affirmative vote of three fourths of all Unit Owners, provided that said Board shall not be less than three in number.

3.2. Initial Members. The initial members of the Board (referred to as "Directors" herein) shall be selected by the Declarant, and need not be Unit Owners. Such initial directors shall serve at the election of the Declarant from the date upon which the Declaration is recorded in the Office of the Register of Deeds for Davie County, until such time as their successors are duly elected and qualified.

The names and addresses of the persons who shall serve on the initial Board from the date upon which the Declaration is so recorded in the Davie County Public Registry until such time as their successors are duly elected and qualified, are as follows:

| NAME            | ADDRESS  |
|-----------------|--|
| Gail Goss       | 2401 Whitehall Park Drive, Suite 700<br>Charlotte, North Carolina 28273-3353 |
| Craig Daugherty | 2401 Whitehall Park Drive, Suite 700<br>Charlotte, North Carolina 28273-3353 |
| Jim Ludwig      | 2401 Whitehall Park Drive, Suite 700<br>Charlotte, North Carolina 28273-3353 |

3.3. Election. Except as provided herein, the directors shall be elected at the annual meeting of the Association, and those persons who receive the highest number of votes shall be deemed to have been elected. Notwithstanding anything herein to the contrary, the Board shall consist of three Directors during the period that Declarant is entitled to appoint a majority of the Directors. The Declarant shall have the right to appoint or remove the Directors until the earlier of the following three dates: (a) within 120 days after the date by which 75% of the Units (including any Units which may be created pursuant to Special Declarant Rights) have been conveyed to Unit purchasers other than Declarant; (b) two years after all Declarants have ceased to offer Units for sale in the ordinary course of business, or (c) two years after any development right to add additional Units under the Act was last exercised.

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

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

Within 60 days after the Unit Owners other than the Declarant are entitled to elect such Director or Directors, or sooner if the Declarant has elected to accelerate such event as aforesaid, the

Association shall call, and give not less than 10 days nor more than 50 days notice of a meeting of the Unit Owners to elect such Director or Directors of the Board. The meeting may be called and the notice given by any Unit Owner if the Association fails to do so.

3.4. Term and Qualification. Each Director shall hold office for the term for which he was elected, or until his death, resignation, retirement, removal, disqualification or until his successor is elected and qualified. Each such Director shall serve for a one year term. Nothing herein contained shall be construed to prevent the election of a Director to succeed himself. Each Director, except those selected by the Declarant pursuant to the Bylaws, shall be one of the Unit Owners or co-owners, provided, however, that in the event a Unit Owner is a corporation, partnership, trust or other legal entity other than a natural person or persons, then an officer or director of such corporation, partner of such partnership, beneficiary of such trust or manager of such other legal entity, shall be eligible to serve as a Director.

3.5. Removal. Directors may be removed from office with or without cause by the affirmative vote of at least 67% of the Voting Members. If any Directors are so removed, new Board members may be elected at the same meeting; provided, however, that the person(s) selected by Declarant cannot be removed without the prior written consent of Declarant.

3.6. Vacancies. A vacancy occurring in the Board may be filled by a majority of the remaining Directors, though less than a quorum, or by the sole remaining director, but a vacancy created by an increase in the authorized number of Directors shall be filled only by election at an annual meeting or a special meeting of Unit Owners called for that purpose. The Voting Members may elect a Director at any time to fill any vacancy not filled by the Board.

In the event that Declarant, in accordance with the rights herein established, selects any person to serve on the Board, Declarant shall have the absolute right at any time, in its sole discretion, to replace such person with another person to serve on the Board. Replacement of any person designated by Declarant to serve on the Board shall be made by written instrument delivered to any officer of the Association, which instrument shall specify the name of the person to be replaced and the name of the person designated as successor to the person so removed from the Board. The removal of any such Board member and the designation of his successor shall be effective immediately upon delivery of such written instrument by Declarant to any officer of the Association.

3.7. Compensation. The Board shall receive no compensation for their services unless expressly allowed by the Board at the direction of the Unit Owners other than the Declarant having two thirds of the total votes.

3.8. Executive Committees. The Board may, by resolution adopted by a majority of the number of Directors fixed by these Bylaws, designate two or more of its members to constitute an executive committee, which committee, to the extent provided in such resolution, shall have and may exercise all of the authority of the Board in the management of the Condominium.

The Board may, in like manner, create such other committees as it deems necessary and appropriate in aiding the Board to carry out its duties and responsibilities with respect to the management of the Condominium.

3.9. Powers and Duties. The Board shall have the powers and duties necessary for the administration of the affairs of the Condominium, and may do all such acts and things, except such acts as by law or the Declaration or by these Bylaws may not be delegated to the Board. Such powers and duties of the Board shall include, but shall not be limited to, the following:

- (a) Determining the Common Expenses required for the affairs of the Condominium, including, without limitation, the operation and maintenance of the Property.
- (b) Collecting the Common Expenses from the Unit Owners.
- (c) Supervising the operation, care, upkeep and maintenance of the Common Elements.

(d) Employing and dismissing the personnel necessary for the maintenance and operation of the Common Elements.

(e) Adopting and amending such reasonable rules and regulations as it may deem advisable for the maintenance, conservation, and beautification of the Property, and for the health, comfort, safety, and general welfare of the owners and occupants of the Property. Written notice of such rules and regulations shall be given to all Unit Owners and occupants, and the entire Property shall at all times be maintained subject to such rules and regulations.

(f) Opening bank accounts on behalf of the Condominium and designating the signatories required therefor,

(g) Selling, mortgaging, voting the votes appurtenant to, or otherwise dealing with Units acquired by the Association, or its designee, corporate or otherwise, on behalf of all Unit Owners, subject to the Declaration and other applicable restrictions, and organizing corporations to act as designees of the Board in acquiring title to Units on behalf of all Unit Owners.

(h) Maintaining and repairing any Unit, if such maintenance or repair is necessary in the discretion of the Board or by operation of applicable restrictions to protect the Common Elements or any other portion of the Property, and a Unit Owner 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 Unit Owner; provided, however, that the Board shall levy a specific assessment against such Unit Owner for the costs of said maintenance or repair, including a reasonable amount for supervision.

(i) Entering any Unit when necessary in connection with any maintenance or construction for which the Board is responsible; provided that, except in the event of emergencies, such entry shall be made during reasonable hours with as little inconvenience to the Unit Owner as practical, and any damage caused thereby shall be repaired by the Board, with such expenses being treated as a Common Expense.

(j) Signing all agreements, contracts, deeds, and vouchers for the payment of expenditures and other instruments in such manner as from time to time shall be determined by written resolution of the Board. Provided, however, that any contracts or leases executed on behalf of the Association prior to the passage of control of the Board to the Association must be terminable by the Association without penalty on not less than 90 days written notice. In the absence of such determination by the Board, such document shall be signed by the Treasurer and countersigned by the President.

(k) Obtaining insurance for the Property, including the Units, pursuant to the applicable provisions of the Declaration.

(l) Making or contracting for repairs, additions, and improvements to, or alterations or restorations 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 condemnation or eminent domain proceeding.

(m) Contracting for all goods, services and insurance, payment for which is to be made from the Common Expense fund.

(n) Instituting, defending, or intervening in litigation or administrative proceedings in the name of or on behalf of the Association or two or more Unit Owners on matters affecting the Condominium.

(o) Borrowing money on behalf of the Condominium, when required in connection with the operation, care, upkeep, and maintenance of the Common Elements; provided, however, that the consent of the Unit Owners of at least two thirds of the Units represented at a meeting at which a quorum has been attained in accordance with the provisions of these Bylaws shall be required for the borrowing of any sum in excess of \$10,000.

(p) Imposing charges for late payment of assessments and, after notice and an opportunity to

be heard, levying reasonable fines for violations of the Declaration, the Bylaws, or rules and regulations established by the Association, all in accordance with Sections 47C-3-107 and 47C-3-107.1 of the Act.

(q) At its discretion, authorizing Unit Owners or other persons to use portions of the Common Elements for private parties and gatherings and imposing reasonable charges for such private use.

(r) Exercising (i) all powers specifically set forth in the Declaration, the Articles of Incorporation, these Bylaws and in the Act, (ii) all powers incidental thereto, and (iii) all other powers of a nonprofit North Carolina corporation.

(s) Suspending the right of any Unit Owner to vote as long as said Unit Owner is delinquent in the payment of Common Expenses or is otherwise in violation of the Declaration or any exhibits thereto or applicable rules and regulations.

3.10. Managing Agent. The Board may engage the services of any person, firm, or corporation to act as managing agent at a compensation established by the Board, to perform such duties and services as the Board shall authorize, other than the powers set forth in subdivisions (a), (e), (g), (h), (i), (p) and (q) of Section 3.9 of this Article III. Any management agreement for the Condominium shall be terminable by either party without cause and without payment of a termination fee or penalty upon 90 days or more written notice thereof and the terms of such agreement may not exceed one year, renewable by agreement of the parties for successive one year periods. Any management agreement shall be terminable by either party for cause upon the giving of not less than 30 days written notice. When professional management has been previously utilized, any decision to establish self management by the Association shall require the prior consent of 67 percent of the Unit Owners and the approval of 51 percent of the Eligible Mortgage Holders, counting one vote for each First Mortgage owned.

The initial managing agent of the Association shall be Adams Egloff Avant Properties, LLC (the "Residential Association"). Provided, however, and subject to the restrictions in this Section, the Residential Association shall have the right to assign its management obligations to a professional management association at any time.

3.11. Duties of Declarant. Within a reasonable time after Unit Owners other than the Declarant elect a majority of the members of the Board (but not more than 60 days after such event), the Declarant shall deliver control of the Association and shall deliver to the Association all property of the Unit Owners and of the Association held or controlled by the Declarant, including, if applicable:

(a) The original or a photocopy of the recorded Declaration of Condominium, and all amendments thereto. If a photocopy is provided, the Declarant must certify by affidavit that it is a complete copy of the actual recorded Declaration.

(b) A copy of the Articles of Incorporation of the Association.

(c) A copy of the Bylaws of the Association.

(d) The minute books, including all minutes, and other books and records of the Association.

(e) Any rules and regulations which have been adopted.

(f) Resignations of resigning officers and Board members.

(g) Association funds or the control thereof.

(h) A Copy of the plans and specifications utilized in the construction or remodeling of improvements on the Property and the supplying of equipment, and for the construction and installation of all

mechanical components servicing the improvements and the Condominium, with a certificate, in affidavit form, of an officer of the Declarant or an architect or engineer authorized to practice in North Carolina, that such plans and specifications represent, to the best of their knowledge and belief, the actual plans and specifications utilized in the construction and improvement of the Condominium and the construction and installation of the mechanical components serving the Improvements and the Property.

- (i) Insurance policies.
- (j) Copies of any Certificates of Occupancy which may have been issued for the Condominium.
- (k) Any other permits issued by governmental bodies applicable to the Condominium in force or issued within one year prior to the date the Unit Owners take control of the Association.
- (l) All written warranties of contractors, subcontractors, suppliers and manufacturers, if any, that are still effective.
- (m) A roster of Unit Owners and their addresses and telephone numbers, if known, as shown on the Declarant's records.
- (n) Employment contracts or service contracts in which the Association is one of the contracting parties, or service contracts in which the Association or Unit Owners have an obligation or responsibility, directly or indirectly, to pay some or all of the fee or charge of the person or persons performing the service.
- (o) All other contracts to which the Association is a party.

#### ARTICLE IV MEETINGS OF DIRECTORS

4.1. Organizational Meeting. The first meeting of the initial Board designated in these Bylaws shall be held at such time as the Declarant shall determine, but in no event later than one year from the date of incorporation of the Association. The first meeting of the first Board elected at that point after which Unit Owners other than the Declarant are entitled to elect a majority of the directors shall be held within 15 days following the meeting of the Unit Owners at which the Board was elected. No notice shall be necessary to the newly elected members of the Board in order to legally constitute such meeting, provided that a quorum is present.

4.2. Regular Meeting. A regular meeting of the Board shall be held immediately after, and at the same place as, the annual meeting or substitute annual meeting of the Unit Owners. In addition, the Board may provide by resolution the time and place, either within or without the State of North Carolina, for the holding of a regular meeting of the Board.

4.3. Special Meetings. Special meetings of the Board may be called by the President, or by any two Directors. Such meetings may be held either within or without the State of North Carolina.

4.4. Notice of Meetings. Regular meetings of the Board may be held without notice. The person(s) who called a special meeting of directors shall, at least two days prior to said meeting, give notice thereof by any usual means of communication. Such notice need not specify the purpose for which the meeting is called.

4.5. Waiver of Notice. Any member of the Board may at any time waive notice of any meeting of the



Board in writing, and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a Director at any meeting of the Board shall constitute a waiver of notice of such meeting except where a member attends the meeting for the express purpose of objecting to the transaction of any business because the meeting was not lawfully called and he does so object.

4.6. Quorum. A majority of the number of Directors fixed by these Bylaws shall be required for and constitute a quorum for the transaction of business at any meeting of the Board. The Directors at a meeting at which a quorum is present may continue to do business until adjournment, notwithstanding the withdrawal of enough Directors to leave less than a quorum.

4.7. Manner of Acting. Except as otherwise provided in this Article, the act of the majority of the Directors present at a meeting at which a quorum is present shall be the act of the Board. A vote of a majority of the number of Directors fixed by these Bylaws shall be required to adopt a resolution constituting an executive committee.

4.8. Organization. Each meeting of the Board shall be presided over by the President, and in the absence of the President, by any person selected to preside by vote of the majority of the Board members present. The Secretary, or in his absence, an Assistant Secretary, or in the absence of both the Secretary and the Assistant Secretary, any person designated by the President of the meeting shall act as secretary of the meeting.

4.9. Informal Action of Board. Action taken by a majority of the Directors without a meeting is nevertheless Board action if written consent to the action in question is signed by all of the Directors and filed with the minutes of the proceedings of the Board, whether done before or after the action so taken.

4.10. Minutes. The Board shall keep minutes of its proceedings, which shall be available for inspection by the Unit Owners during reasonable business hours.

4.11. Liability of the Board and Officers. The Directors and the officers provided for in Article V hereof shall not be liable to the Unit Owners for any mistake of judgment, negligence, or otherwise, except for their own individual willful misconduct or bad faith. The Unit Owners shall indemnify and hold harmless each of the Directors and the officers against all contractual liability to others arising out of contracts made by the Board or the officers on behalf of the Condominium, unless any such contract shall have been made in bad faith or contrary to the provisions of the Declaration or these Bylaws. It is intended that the Directors or any officer shall have no personal liability With respect to any contract made by them on behalf of the Condominium, except to the extent that they are Unit Owners and have liability as such. It is also intended that the liability of any Unit Owner arising out of any contract made by the Board or the officers, or out of the aforesaid indemnity in favor of the directors or the officers, shall be limited to such proportion of the total liability thereunder as his interest in the Common Elements bears to the interests of all the Unit Owners in the Common Elements. Every agreement made by the Board, by the managing agent or by the officers on behalf of the Condominium shall provide that the members of the Board, the managing agent or the officers, as the case may be, are acting only as agents for the Unit Owners, and shall have no personal liability thereunder.

4.12. Attendance of Unit Owners. Regular meetings of the Board shall not be open to Unit Owners; provided, however, Unit Owners may request to attend meetings of the Board for a specific purpose as stated in a written request to the Board, which request shall be considered by the Board in its sole and absolute discretion.

## ARTICLE V OFFICERS

5.1. Number. The principal officers of the Condominium 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. Any two or more offices may be held by the same person, except the offices of President and Secretary.

5.2. Election and Term. The officers of the Condominium shall be elected by the Board. The President,

Vice President, Secretary and Treasurer shall be elected from among the Board, and all other officers, if any, need only be a Unit Owner. The officers elected by the initial Board are not required to be Unit Owners. The election of the officers may be held at the regular annual meeting of the Board.

Each officer shall hold office for a period of one year, or until his death, resignation, retirement, removal, disqualification, or until his successor is elected and qualifies.

5.3. Removal. Any officer or agent elected or appointed by the Board may be removed by the Board, with or without cause.

5.4. Compensation. No officer shall receive any compensation from the Condominium for acting as such.

5.5. President. The President shall be the principal executive officer of the Condominium, and, subject to the control of the Board, shall supervise and control the management of the Condominium. The President shall, when present, preside at all meetings of the Board and of the Unit Owners and, in general, shall perform all duties incident to the office of President, including the preparation, execution, certification, and recordation, with the Secretary, of amendments to the Declaration on behalf of the Association, and such other duties as may be prescribed from time to time by the Board.

5.6. Vice President. The Vice President, and if there be more than one, the Vice Presidents, designated by the Board, shall, in the absence or disability of the President, have the powers and perform the duties of said office. In addition, each Vice President shall perform such other duties and have such other powers as shall be prescribed by the President or by the Board.

5.7. Secretary. The Secretary shall keep accurate records of the acts and proceedings of all meetings of Unit Owners and directors. He shall give, or cause to be given, all notices required by law and by these Bylaws. He shall have general charge of the minute books and records of both the Association and the Board. He shall sign such instruments as may require his signature, and, in general, shall perform all duties incident to the office of secretary, including the preparation, execution, certification, and recordation, with the President, of amendments to the Declaration on behalf of the Association, and such other duties as may be assigned him from time to time by the President of the Board or by the Board.

5.8. Treasurer. The treasurer shall receive and deposit in appropriate bank accounts all Condominium funds and securities, and shall receive, deposit or disburse the same under the direction of the Board. He shall keep full and accurate accounts of the finances of the Condominium in books especially provided for that purpose. He shall cause a true statement of its assets and liabilities as of the close of each fiscal year, and of the results of its operations and changes in surplus for each fiscal year, all in reasonable detail, to be prepared and distributed to all Unit Owners and members of the Board on or before the 15th day of the second month following the close of each fiscal year. The statement so filed shall be kept available for inspection by any Unit Owner for a period of three years. The Treasurer shall also prepare and file all reports and returns required by federal, state or local law, and shall perform all other duties as may be assigned to him from time to time by the President of the Board or by the Board.

5.9. Assistant Secretaries and Treasurers. The Assistant Secretaries and Assistant Treasurers, if any, shall, in the absence of the Secretary and Treasurer, respectively, have all the powers and perform all of the duties of those officers, and they shall perform such other duties as shall be assigned to them by the Secretary or the Treasurer, respectively, or by the President or by the Board.

## ARTICLE VI OPERATION OF THE PROPERTY

6.1. Assessment and Determination of Common Expense. The Board shall from time to time, and at least annually, prepare a budget for the Condominium, for the purpose of determining the amount of the Annual Assessments to be collected from the Unit Owners in order to provide for the Common Expenses of the

Condominium, and allocate and assess such Common Expenses among the Unit Owners, according to their Percentage of Interest in the Common Elements as set forth in the Declaration, taking into consideration any expected income and any surplus from the prior year's operations. The Common Expenses shall include, without limitation: the expenses, costs and charges incurred in connection with the administration, operation and management of the Condominium property; the cost of maintenance, repair, replacement and restoration of the Common Elements, or any part thereof; 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; such amounts as the Board may deem proper for the convenience, comfort and well being of the Unit Owners, and for the operation, management and maintenance of the Property, including, without limitation, an amount for working capital of the Condominium, for a general operating reserve, for a reserve fund for replacement or improvement to the Common Elements and those Limited Common Elements the Association is obligated to maintain, and to make up any deficit in the Common Expenses for any prior year; in proper cases, the cost of administration and of maintenance and repair of the Limited Common Elements; and any other expenses lawfully agreed upon.

In establishing a reserve fund for replacements, the Board shall take into account the number and nature of replaceable assets, the expected life of each asset and the expected repair or replacement cost. The Board shall then set the required capital contribution in an amount sufficient to permit meeting by equal annual installments over the applicable period the projected capital needs of the Association with respect to both amount and timing.

Within 30 days after adoption by the Board of any proposed budget for the Condominium, the Board shall provide a summary of the budget to all Unit Owners and shall give notice of a date for a meeting of the Unit Owners to consider ratification of the budget not less than 14 nor more than 30 days after mailing of the summary and notice. Notwithstanding Section 4.6 of these Bylaws, a quorum need not be present at the meeting. The budget is ratified unless at the meeting a majority of all the Unit Owners (whether or not present at the meeting) votes to reject the budget. In the event the proposed budget is rejected, the periodic budget last ratified shall be continued until such time as the Unit Owners ratify a subsequent budget proposed by the Board.

6.2. Payment of Assessments. All Unit Owners shall be obligated to pay (a) Annual Assessments of Common Expenses assessed by the Board pursuant to the provisions of Section 6.1; (b) special assessments to be established and collected as provided herein, and (c) specific assessments against any Unit which are established pursuant to the terms of these Bylaws. Annual Assessments shall be due and payable in monthly installments on the first day of every month. A late payment charge in an amount to be determined by the Board shall be assessed for any installment not paid by the tenth of the month. Any installment not paid during the month in which it is due shall be subject to the late payment charge and shall accrue interest as provided in Section 6.5, and shall constitute a lien on the Unit as provided in Section 6.6.

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

6.3. Special Assessments. The Association may levy Special Assessments for Common Expenses not covered by the Annual Assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Elements, including fixtures and personal property related thereto, provided that any such Assessment shall have the

assent of two thirds of the Voting Members at a meeting duly called for this purpose. Such Special Assessments shall be charged to the Units according to their Allocated Interests in the Common Elements. In addition, the Board may levy Special Assessments against one or more, but less than all, of the Units to cover repairs or maintenance for which such Unit Owner or Unit Owners are responsible and which they have failed to make, or for repairs or maintenance required of a Unit Owner or Unit Owners which impair the value of the Common Elements or the Unit or Units, or expenses which are incurred in the abatement of or as a result of a violation by a Unit Owner or Owners of the provisions of the Declaration, the Bylaws or the Rules and Regulations, or for fines levied for said violations, or where the Board has purchased a Unit on behalf of one or more Unit Owners. The period of assessment and manner of payment of such assessment shall be determined by the Board.

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

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

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

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

6.6. Lien and Personal Obligation. Each Assessment provided for in this Article, together with late payment charges, interest and expenses, including attorneys' fees (as permitted by law), shall be a charge on and a continuing lien upon the Unit against which the Assessment is made when a notice of such lien has been filed of record in the office of the Clerk of Superior Court of Davie County, North Carolina, in the manner provided by Article 8, Chapter 44, of the North Carolina General Statutes, provided such notice of lien shall not be recorded until such sums assessed remain unpaid for a period of 30 days after the same shall become due. Said notice of lien shall also secure all Assessments against the Unit becoming due thereafter until the lien has been satisfied. Said lien may be foreclosed in the manner as a deed of trust on real property. In addition, each Unit Owner shall be personally liable for any Assessment against his Unit becoming due and payable while he is the Owner of such Unit.

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

therewith. The Association shall share in the excess, if any, realized by the sale of any Unit pursuant to a foreclosure or action instituted by a superior lien holder, to the extent of its lien.

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

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

6.10. Statement of Common Expense. The Board shall promptly provide to any Unit Owner so requesting in writing a written statement of all unpaid charges due from such Unit Owner, for which it may impose a reasonable charge at its discretion.

6.11. Abatement and Enjoinment of Violations by Unit Owners. The violation of any rule or regulation adopted by the Board, the breach of any Bylaw contained herein, or the breach of any provision of the Declaration, shall give the Board the right, in addition to any other rights set forth in these Bylaws: (a) to enter the Unit in which, or as to which, such violation or breach exists, and to make any repairs, and to summarily abate and remove, at the expense of the defaulting Unit Owner, any structure, thing, or condition which may exist therein contrary to the intent and meaning of the provisions hereof, and the Board shall not thereby be deemed guilty in any manner of trespass, but no items of construction shall be altered or demolished pursuant to this authority before judicial proceedings are instituted; (b) to enjoin, abate, or remedy by appropriate legal proceedings, either at law or in equity, at the expense of the defaulting Unit Owner, the continuance of any such breach; (c) in any case of flagrant or repeated violation by a Unit Owner, to require such Unit Owner to give sufficient sureties for his future compliance with such Condominium documents; or (d) after notice and an opportunity to be heard, to levy reasonable assessments and fines in accordance with Sections 47C-3-107 and 47C-3-107.1 of the Act for such violations. The failure of the Board or Adjudicatory Panel to so act with respect to any such violation or breach shall not be deemed a waiver of the Board's or Adjudicatory Panel's right to act with respect to the same or any other breach.

6.12. Maintenance and Repair.

(a) Each Unit Owner shall maintain, repair, and replace, at his sole cost and expense, all portions of his Unit which may become in need of maintenance, repair, or replacement, including the components of the heating and air conditioning system within and appurtenant to each Unit, if any, all bathroom and kitchen fixtures and appliances, light fixtures, interior, non-loadbearing walls, doors, floors, ceilings, carpeting, drapes and other items within the Unit, whether structural or nonstructural, ordinary or extraordinary (other than maintenance of and repairs to any Common Elements not specifically set forth herein contained therein and not necessitated by the negligence, misuse or neglect of the Unit Owner, his employees, guests, agents, servants, lessees, invitees or contractors). Each Unit Owner shall clean the Limited Common Elements appurtenant to his Unit and replace all light bulbs in fixtures (if any) located in such Limited Common Elements. Each Unit Owner shall be responsible for replacing all heating and air conditioning filters, if any, required in his Unit. Each Unit Owner shall further be responsible for all damages to any and all other Units and/or to the Common Elements which his failure to undertake his maintenance responsibility may cause. All damages to the Common Elements or other Units intentionally or negligently caused by the Unit Owner, his employees, guests, agents, servants, lessees, invitees or contractors shall be promptly repaired by the Unit Owner at his sole cost and expense; provided that there is

excluded from the provisions contained in this section such repairs necessitated by casualties insured against by the Association to the extent the Association receives insurance proceeds for such repairs. The Unit Owner shall be in said instance required to pay such portion of the costs of such maintenance, repair and replacement as shall exceed the amount of the applicable insurance proceeds. If the Unit Owner does not make those repairs to be made by him within 30 days from written demand by the Board, the same may be repaired by the Board, and the cost thereof shall be assessed against the Unit owned by the subject Unit Owner.

(b) The Association, through its Board, shall maintain, repair and replace all portions of the Common Elements and Limited Common Elements (except as provided in Section 6.12(a) above or in the Declaration) which shall require same, whether located inside or outside of the Units (unless necessitated by the negligence, misuse or neglect of a Unit Owner, his employees, guests, agents, servants, lessees, invitees or contractors, in which case such expense shall be charged to such Unit Owner, or unless herein provided to the contrary), and the cost thereof shall be charged to all the Unit Owners as a Common Expense.

6.13. Restrictions on Unit Owners. No Unit Owner shall perform or cause to be performed any maintenance, repair or replacement work which disturbs the rights of the other Unit Owners, jeopardizes the soundness or the safety of the Condominium property, or reduces the value thereof. Each Unit Owner shall cause any work so performed or being performed on the Unit, which, in the sole opinion of the Board, violates the terms of this section, to be immediately corrected, and he shall refrain from recommencing or continuing any such work without written consent of the Board.

6.14. Duty to Report. Each Unit Owner shall promptly report to the Board or its agent any defect or need for repairs or replacement the responsibility for which is that of the Association.

6.15. Additions, Alterations or Improvements by the Association. Whenever in the judgment of the Board, the Common Elements shall require additions, alterations or improvements, the Board shall proceed with such additions, alterations or improvements, and shall assess all Unit Owners for the costs thereof, as a Common Expense, subject, however, to the provisions of Sections 6.1 and 6.3.

6.16. Additions or Improvements by Unit Owners. No Unit Owner shall make any addition, alteration or improvement in or to his Unit which impairs the structural integrity or mechanical systems or lessens the support of any part of the Condominium. No Unit Owner shall make any addition, alteration or improvement which affects the exterior portion or outward appearance of such Unit, without the prior written consent thereto of the Board. The Board shall have the obligation to answer any Written request by a Unit Owner for approval of a proposed addition, alteration or improvement in or to such Unit Owner's Unit within 30 days after such request, and failure to do so within the stipulated time shall constitute a consent by the Board to the proposed addition, alteration or improvement.

6.17. Use of Common Elements and Facilities. A Unit Owner shall not interfere with the use of the Common Elements by the remaining Unit Owners and their employees, guests, agents, servants, lessees, invitees, or contractors.

6.18. Conveyance or Encumbrance of Common Elements. All or portions of the Common Elements may be conveyed or subjected to a security interest by the Association in accordance with the provision of Section 47C-3-112 of the Act.

6.19. Right of Access. Unit Owner shall grant a right of access to his Unit to the managing agent and/or any other person authorized by the Board or the managing agent, for the purpose of making inspections or for the purpose of correcting any condition originating in his Unit and threatening another Unit or a Common Element, or for the purpose of performing installations, alterations or repairs to the mechanical or electrical services or other Common Elements in his Unit or elsewhere in the Buildings, or to correct any condition which violates the provisions of any mortgage covering another Unit, provided that requests for entry are made in advance, and that any such entry is at a time reasonably convenient to the Unit Owner. In the case of an emergency, such right of entry shall be immediate, whether or not the Unit Owner is present at the time such request for entry is made, and whether or not such entry is at a time reasonably convenient to the Unit Owner.

6.20. Rules of Conduct. Rules and Regulations concerning the use of the Units and the Common Elements may be promulgated and amended by the Board. Such Rules and Regulations shall be equally applicable to all Unit Owners and shall be uniform in their application and effect. Copies of such Rules and Regulations shall be furnished by the Board to each Unit Owner prior to their effective date.

6.21. Remedies Cumulative. All rights, remedies and privileges granted to the Association or the Owner or Owners of a Unit pursuant to any terms, provisions, covenants or conditions of the Condominium Documents shall be cumulative, and the exercise of any one or more shall not constitute an election of remedies, nor shall it preclude the party thus exercising the same from exercising such other and additional rights, remedies or privileges as may be available to such party at law or in equity.

6.2.2. Nonwaiver of Remedies.

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

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

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

## ARTICLE VII RECORDS AND AUDITS

7.1. Reports. The Board shall keep detailed records of the actions of the Board and the managing agent minutes of the meetings of the Board, minutes of the meetings of the Association, and financing records and books of account of the Condominium, including a chronological listing of receipts and expenditures, as well as a separate account for each Unit which, among other things, shall, contain the amount of each Assessment against each Unit, the date when due, the amounts paid and the balance remaining unpaid. A current copy of the Declaration, Articles of Incorporation of the Association, these Bylaws, any currently effective Rules and Regulations, and the Association's books, records and financial statements shall be available for examination by all Unit Owners, their duly authorized agents or attorneys, and all holders, guarantors, or insurers of First Mortgages secured by Units, their attorneys and authorized agents, at convenient hours during normal business hours that shall be set and announced for general knowledge. A written annual summary of all receipts and expenditures of the Condominium shall be rendered by the Board to all Unit Owners on or before the 15th day of the second month following the close of each fiscal year. In addition, an annual report of the receipts and expenditures of the Condominium shall be rendered by the Board to all Unit Owners and to all Eligible Mortgage Holders who have requested the same, promptly after the end of each fiscal year.

7.2. Common Expense Funds. All sums collected by the Association, either as Assessments for the Common Expenses or as Special Assessments may be commingled in a single fund, but they shall be held for the Unit Owners for the purposes for which they are paid, and shall, subject to the right of withdrawal or refund provided herein, be credited to accounts from which shall be paid the charges for which the Assessments are made. Such accounts shall include the following, or such other and further accounts as the Board from time to time shall determine:

(a) General Common Expense Account to which shall be credited collection of that portion of the Common Expense Assessments received for defraying the costs of operating the Condominium on a day to day basis, including normal maintenance and repairs, insurance and related charges; and



(b) Capital Reserve Account to which shall be credited, all sums collected which are to be allocated for capital expenditures for the reconstruction, repair and replacement of Common Elements at a future date.

All sums collected by the Association during the fiscal year, either as assessments of the Common Expenses or as special assessments, and allocated to the General Common Expense Account or to any other account from which noncapital expenditures may be made, in excess of expenditures during such fiscal year made from or chargeable to said account or accounts shall be deemed contributions to capital at the end of said fiscal year, and shall be transferred to the Capital Reserve Account. All amounts credited to said Capital Reserve Account shall be contributions to capital, and shall be held in trust by the Association for future expenditures of a capital nature, and shall serve to reduce the Assessments required for said capital expenditures.

7.3. Audits. All books of account and financial records shall be kept in accordance with good and acceptable accounting practices. The Board shall have an audit of the books of account and financial records of the Association made by an independent certified public accountant immediately following the close of each fiscal year and the report of such accountant shall be received by the Board and made available for inspection by all Unit Owners and all Eligible Mortgage Holders on or before the 15th day of the second month following the close of each fiscal year.

## ARTICLE VIII AMENDMENTS TO BYLAWS

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

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

8.3. Limitation. No amendment may be adopted which would eliminate, modify, prejudice, abridge, or otherwise adversely affect any rights, benefits, privileges or priorities granted or reserved to the Declarant or Eligible Mortgage Holders without the consent of said Declarant and Eligible Mortgage Holder in each instance. No amendment shall be made that is in conflict with the Articles of Incorporation of the Association or Declaration without satisfaction of the requirements therein contained. So long as the Declarant controls the Association and the Federal Housing Administration (FHA) holds or insures any First Mortgage on a Unit, the Federal Housing Administration(FHA) shall have the right to veto any amendment to the Bylaws. No amendment to this Section shall be valid.

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

## ARTICLE IX CONDEMNATION

9.1. General. Whenever all or any part of the Condominium Property shall be taken by any authority having the power of condemnation or eminent domain, each Unit Owner and all Eligible Mortgage Holders shall be



entitled to notice thereof and to participate in the proceedings incident thereto unless otherwise prohibited by law. The award made for such taking shall be payable to the Association. Unless otherwise provided by law at the time of such taking, any award made therefor shall be disbursed by the Association as provided in this Article IX

9.2. Common Elements. If the taking is confined to the Common Elements (general or limited) on which improvements shall have been constructed, and at least 80% of the total vote of the members of the Association entitled to vote shall vote within 60 days after such taking to replace the improvements, or any part thereof, on the remaining land included in the Common Elements (general or limited) and according to the plans therefor first approved by the Association, then the Board shall arrange for such replacement and the Association shall disburse the proceeds of such award in the same manner as they are required to disburse insurance proceeds where damage or destruction to the Common Elements (general or limited) is to be repaired or reconstructed as provided for herein; subject, however, to the right hereby reserved to the Association to provide by a majority vote of the Voting Members, for the disbursement by the Association of the remaining proceeds held by it (after the payment of all costs incident to such replacement) to the Unit Owners, or to any one or more of them or to their institutional lenders as their interests may appear in amounts disproportionate to their percentages of undivided interest in the Common Elements (general or limited) established herein, which disproportionate amounts shall correspond with the disproportionate damage sustained by the Unit Owners or any one or more of them as the Association may determine. If at least 80% of the Voting Members shall not decide within 60 days after such taking to replace said improvements, or if the taking is confined to the Common Elements (general or limited) on which no improvements shall have been constructed, then the Association shall disburse the proceeds of the award provided for the disbursement of the remaining proceeds of an award after payment of all costs incident to replacement of improvements taken has been made, including the right reserved to the Association to provide for the disbursement of the remaining proceeds held by it to the Unit Owners in disproportionate amounts. All disbursements made under this Section 9.2 shall be in strict compliance with Section 47C-1-107 of the Act.

9.3. Units. If the taking includes one or more Units, or any part or parts thereof, whether or not there is included in the taking any part of the Common Elements (limited or general), then the award shall be disbursed and all related matters shall be handled pursuant to and in accordance with the consent of all Unit Owners and First Mortgagees affected, and thereafter the Board shall reallocate that Unit's Allocated Interests in a duly recorded amendment to the Declaration of Condominium in accordance with Section 47C-1-107 of the Act.

9.4. Termination. The Board shall call a meeting of all Unit Owners at least 45 days prior to any final taking by the condemning authority to determine the action to be taken pursuant to Sections 9.2 and 9.3 above. Except in the event of a taking of all the Units by eminent domain, in the event the condemnation involves more than 10% of the value of the Common Elements (limited or general) and/or more than 15% of the total value of all Units, the Condominium may be terminated at such meeting by written approval of not less than 80% of the Voting Members. Any termination agreement shall be in compliance with 47C-2-118 of the Act.

#### ARTICLE X ARCHITECTURAL CONTROL

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

#### ARTICLE XI MISCELLANEOUS

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

11.2. Notification to Mortgagee. Any Owner who mortgages his Unit shall notify the Association of the name and address of the mortgagee, and the Association shall maintain such information in a book entitled "Mortgagees of Condominiums." In addition to any other notification provided for in the Declaration or these Bylaws, the Association may, at the written request of a mortgagee of any such Unit, report any unpaid assessments due from the Owner of such Unit. The Association shall notify each mortgagee appearing in said book of the name of each company insuring the Condominium Property under the master policy and the amounts of the coverages thereunder.

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

11.4. Successors Bound. The rights, privileges, duties and responsibilities set forth in the Declaration or these Bylaws, 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.

11.5. 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.

11.6. Principal Office; Registered Office. The initial principal office and registered office of the Association shall be located at 2401 Whitehall Park Drive, Suite 700, Charlotte, North Carolina 28273 and the registered office of the Association shall be located at 2600 One Wachovia Center, 301 South College Street, Charlotte, North Carolina 28202-6038.

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

11.8. Seal. The seal of the Association shall contain the name of the Association, the word "Seal," the state of incorporation and such other words and figures as are desired by the Board. When obtained, the seal shall be impressed in the margin of this Section of the Bylaws.

11.9. Fiscal Year. The fiscal year of the Association shall be the calendar year.

11.10 Distribution of Assets upon Dissolution. Upon dissolution of the corporation, the assets thereof shall, after all liabilities and obligations of the corporation have been paid, or adequate provision made therefor, be dedicated to an appropriate public agency to be used for purposes similar to those for which the corporation was created or, in the event that such dedication is refused acceptance, distributed to any association or associations organized for purposes similar to those set forth herein.

Approved this 18 day of December, 2002.

Paul Jan  
\_\_\_\_\_, Secretary

**EXHIBIT G  
TO DECLARATION OF  
THE CONDOMINIUMS AT KINDERTON VILLAGE  
RESTRICTIONS**

06464

FILED FOR REGISTRATION  
 July 29, 2002 11:22 A.M.  
 DATE TIME  
 AND RECORDED IN BOOK 430 PAGE 415  
 M. BRENT SHOAF, REGISTER OF DEEDS  
 DAVIE COUNTY, NC  
 BY Marcus Smith deputy

Drawn by & return to:  
 Donald M. VonCannon  
 Allman Spry Leggett & Crumpler, P.A.  
 PO Drawer 5129  
 Winston-Salem, NC 27113-5129

NORTH CAROLINA ) FIRST AMENDMENT TO DECLARATION  
 ) OF COVENANTS, CONDITIONS AND  
 DAVIE COUNTY ) RESTRICTIONS FOR KINDERTON  
 VILLAGE RESIDENTIAL HOMEOWNERS  
 MASTER ASSOCIATION

THIS FIRST AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR KINDERTON VILLAGE RESIDENTIAL HOMEOWNERS MASTER ASSOCIATION, made this 25<sup>th</sup> day of July, 2002, by ADAMS EGLOFF AVANT PROPERTIES, L.L.C., a North Carolina limited liability company, having its principal office in Forsyth County, North Carolina, hereinafter referred to as the "Declarant";

WITNESSETH:

WHEREAS, Adams Egloff Avant Properties, L.L.C. caused to be recorded in Book 354, Page 354, Davie County Registry, a Declaration of Covenants, hereinafter referred to as the "Declaration", which established certain Restrictions, Covenants and Conditions for the property described therein;

WHEREAS, the Declarant desires to amend the Declaration by permitting the Annual Assessment to be collected on a quarterly basis as well as a monthly or annual basis, and to amend the Use Restrictions in Section 2 of Article VI of the Declaration;

WHEREAS, Section 2 of Article IX of the Declaration provides that the Declaration may be amended by the Declarant so long as the Declarant has the right to subject additional property to the Declaration as provided in Article II of the Declaration; and

WHEREAS, at the time of execution of this Amendment, the Declarant still has the right to subject additional property to the Declaration.

NOW, THEREFORE, the Declarant does hereby amend the Declaration of Covenant, Conditions and Restrictions recorded in Deed Book 354, Page 354, Davie County Registry, as follows:

1. The first sentence of the last full paragraph of Section 1 of Article V of the Declaration shall be amended by deleting the first sentence in its entirety and substituting the following: "The Annual Assessment provided for herein for the Master Association shall be payable in advance on an annual basis by every Sub-Association, unless the Master Association decides by a majority vote to have the assessment payable monthly or quarterly."

2. The third and fourth sentences of paragraph (k) of Section 2 of Article VI (beginning with "Any standard household pets . . ." and ending with "... restraining such pets." of the Declaration shall be amended by deleting the said sentences in their entirety and substituting the following: "Any standard household pets which are permitted by this paragraph shall be kept primarily within the residence and/or within a fenced-in area of the rear yard, which fenced-in area shall comprise at least one-half (1/2) of the rear yard portion of the Lot. No such pet shall be restrained by a chain, cage or pen and no such pet shall be allowed to disturb other Owners or be a nuisance to the neighbors."

3. Paragraph (p) of Section 2 of Article VI of the Declaration shall be amended by deleting the words "garbage cans" in the second line of the paragraph and the following sentence added to the paragraph: "Garbage cans do not have to be screened from view so long as the garbage cans are kept within the garage or behind the residence and are not visible from any street. If located behind the residence, the garbage cans and the area around the garbage cans must be kept in a neat and presentable appearance."

4. The third sentence of paragraph (y) of Section 2 of Article VI (beginning with "No vehicle which..." and ending with "... invitee of the Owner." of the Declaration shall be amended by deleting the said sentence in its entirety and substituting the following: "No vehicle which contains any commercial printing or signs on the vehicle may be parked on a Lot unless it is parked on the driveway of the residence and is the primary vehicle of one of the occupants of the residence."

5. Paragraph (b) of Section 6 of Article VI of the Declaration shall be amended by deleting the said paragraph in its entirety and substituting the following: "If any exterior air-conditioning or heating equipment is visible from any street, it must be screened from public view by a screening material or shrubbery approved by the Committee."

EXCEPT AS AMENDED HEREIN, all other terms and conditions of the aforesaid Declaration shall remain as stated.

IN WITNESS WHEREOF, the Declarant has caused this instrument to be executed by authority duly given the day and year first above written.

ADAM EGLOFF AVANT PROPERTIES, L.L.C.  
a North Carolina limited liability company

BY: 

Kerry L. Avant, Member

\*\*\*\*\*

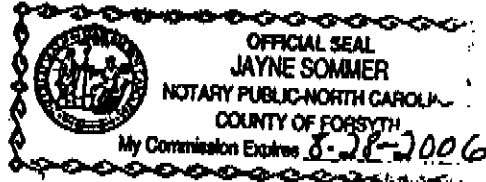
NORTH CAROLINA )  
COUNTY OF FORSYTH )

I, Jayne Sommer, a Notary Public of Forsyth County,  
State of North Carolina, do hereby certify that Kerry L. Avant, Member of Adams Egloff Avant  
Properties, L.L.C., a North Carolina limited liability company, personally appeared before me  
this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and notarial seal or stamp this the 25<sup>th</sup> day of July, 2002.

Jayne Sommer  
Notary Public

My commission expires: 8-28-2006



STATE OF NORTH CAROLINA, DAVIE COUNTY

The foregoing certificate of Jayne Sommer, Notary Public of Forsyth County,  
is certified to be correct. This the 29th day of July, 2002.

M. BRENT SHOAF, REGISTER OF DEEDS

BY: Martine Smith deputy

FILED FOR REGISTRATION

08614

December 19, 2000 10:57 A.M.

DATE TIME

AND RECORDED IN BOOK 354 PAGE 354

M. BRENT SHOAF, REGISTER OF DEEDS

DAVIE COUNTY, NC

BY Carol J. Forrest  
Deputy

Drawn by: D. M. VonCannon

Return to: D. M. VonCannon

PO Drawer 5129

Winston-Salem, NC

27113-5129

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AND RESTRICTIONS FOR

KINDERTON VILLAGE RESIDENTIAL HOMEOWNERS MASTER ASSOCIATION

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COUNTY OF DAVIE

WHEREAS, the residential portion of Kinderton will lie north of Interstate 40, along with some commercial areas, and the residential areas will be known as "Kinderton Village", and when used in this Declaration, "Kinderton Village" will mean only the residential area under the Declarant's control or subsequently controlled by the Declarant;

WHEREAS, the Declarant will create certain amenities within the residential area that will be for the general use of all residential communities such as, but the Declarant is not required to provide, private streets, lakes, community center, gazebo, open areas, and such other amenities as the Declarant or Master Association, as hereinafter defined, may create, but neither the Declarant nor the Master Association is required to provide any such amenities;

WHEREAS, the amenities provided for all of the residential communities will be permanent common areas and community facilities for the benefit of all of the residential communities, and will be known and designated as "General Common Area(s)", (hereinafter collectively referred to as "General Common Areas") on the recorded plats of Kinderton Village, as opposed to specific common areas which are only for the use and benefit of a particular community within Kinderton Village;

WHEREAS, Declarant desires to provide for the maintenance and use of the General Common Areas, and to this end, desires to subject such portions of the Property as Declarant, its successor or assigns, so designates to the terms and conditions of this Declaration;

WHEREAS, Declarant has deemed it desirable, for the efficient preservation of values of and amenities in the Property subject to this document, to create an association to which would be delegated and assigned the powers and duties of maintaining and administering the General Common Areas located within such property and establishing a procedure for accessing its members and disbursing the charges and assessments hereinafter created and collected. To this end, Declarant has caused to be created for the purposes aforesaid, a North Carolina non-profit corporation under the name and style of Kinderton Village Residential Homeowners Master Association;

WHEREAS, Declarant anticipates that the Property subject to this Declaration will be developed with different housing styles and forms of ownership by different developers and builders. To these ends, Declarant anticipates forming additional homeowners associations (hereinafter sometimes referred to as "Sub-Associations") which will govern and oversee the particular development and administration of the separate and distinct communities that are anticipated within the Property. Declarant anticipates that such Sub-Associations will be responsible for control, oversight and enforcement of rules and regulations applicable to the particular community, the collection of dues and assessments within such community and the

payment of dues and assessments from such Sub-Association to the Kinderton Village Residential Homeowners Master Association, the intent being that the Kinderton Village Residential Homeowners Master Association will have the responsibility for maintenance and upkeep of the General Common Areas and facilities located within the real property more particularly described hereinafter;

WHEREAS, the Sub-Associations to be formed will constitute the membership of the Kinderton Village Residential Homeowners Master Association and the individual lot, townhouse and condominium owners within any particular community will be members of a Sub-Association but will not, individually, be members of the Kinderton Village Residential Homeowners Master Association; and

WHEREAS, Declarant will require that the Master Association enter into an agreement or agreements with the Sub-Associations so that members of Sub-Associations will have the right to use and enjoy the General Common Areas.

NOW, THEREFORE, the Declarant declares that any real property subjected to Declaration requiring membership in the Kinderton Village Residential Homeowners Master Association and such additions thereto as may hereinafter be made pursuant to Article II hereof, is and shall be owned, held, transferred, sold, conveyed and occupied subject to the following covenants, conditions, restrictions, easements, charges and liens which shall run with the land and be binding upon and inure to the benefit of all owners thereof, their heirs, personal representatives, successors and assigns.

## ARTICLE I

### Definitions

The following terms when used in this Declaration or any supplemental declaration hereto or any other Governing Document, as hereinafter defined, as capitalized terms are intended to have their natural, commonly accepted definitions (unless the context shall prohibit), and shall be specifically defined as follows:

Section 1. "Amenities" shall mean the facilities constructed, erected or installed in the General Common Areas for the use, benefit and enjoyment of members of the Association.

Section 2. "Annual Assessment" shall mean the funds which a Member pays to the Sub-Association or Master Association, as the case may be, for the regular maintenance, upkeep and other expenses of the Sub-Association or Master Association as provided in Article V hereinafter.

Section 3. "Apartment" or "Apartment Unit" shall mean the individual, separate living spaces contained in a larger building which are leased to individuals for residential living space.

Section 4. "Architectural Guidelines" shall mean the architectural, design and construction guidelines set forth in the Kinderton Village Design Guidelines by Cline Davis Architects, P.A./Stimmel Associates, P.A. dated September 18, 2000, and as amended.

Section 5. "Board of Directors" or "Board" shall mean those persons elected or appointed to act collectively as the directors of the Master Association.

Section 6. "Bylaws" shall mean the Bylaws of the Master Association as they now or hereafter exist.

Section 7. "Charter" shall mean the Articles of Incorporation of the Master Association as they are filed in the office of the Secretary of State for North Carolina, and any amendments thereto.

Section 8. "Condominium Unit" shall mean a single-family residence built for sale as a part of larger building described in an area designated by a recorded declaration of condominium ownership and/or on a recorded plat showing the location and dimensions of individual condominium units.

Section 9. "Committee" shall mean the committee formed by the Board of Directors to enforce the architectural control described in Article VI. Until the Committee is formed the Declarant shall carry out the duties described in Article VI.

Section 10. "Declarant" shall mean and refer to Adams Egloff Avant Properties, L.L.C., its successors and assigns.

Section 11. "General Common Areas" shall mean that real property containing Amenities for the general use of the homeowners in Kinderton Village regardless of the type of residential property that the homeowner has, i.e., apartment, single family, townhouse or condominium unit, and regardless of the General Common Areas' location, i.e., the General Common Area may be located within or without the boundaries of the Sub-Associations, but

such General Common Area shall be designated as such on a recorded plat for the purpose of designating the General Common Area or on the recorded plats of the Sub-Associations. The General Common Area will be conveyed to the Master Association by the Declarant.

Section 12. "Governing Documents" shall mean this Declaration and any applicable supplements or amendments, the Articles of Incorporation of the Association, the By-Laws of the Association, and the Architectural Guidelines, all as they may be amended.

Section 13. "Limited Common Areas" shall mean all real property owned by the Sub-Association for the common use, benefit and enjoyment of the Owners of Lots in a particular Sub-Association and designated as "Limited Common Open Space" or "Limited Common Areas" on any recorded plat in the office of the Register of Deeds for Davie County in accordance with the provisions of this Declaration or the declaration of a Sub-Association and which makes reference to this Declaration or the declaration of the Sub-Association. The term "Limited Common Areas" does not include the General Common Areas as defined in the Master Declaration and owned by the Master Association for the use, benefit and enjoyment of all Sub-Associations.

Section 14. "Kinderton Village" shall mean residential portions of the property developed in the northeast quadrant created by Interstate 40 and Highway 801 in Davie County, NC and any additional residential properties added thereto.

Section 15. "Lot" shall mean and refer to any plot of land, whether or not improvements are constructed thereon, which constitutes or will constitute, after the construction of improvements, a single dwelling site as shown on plats for Kinderton Village, or amendments thereto, recorded in Davie County Registry, and as used in this Declaration for calculating all voting matters and apportioning costs and assessments, "Lot" shall also mean a townhouse or condominium unit as defined herein, and shall also mean an Apartment Unit contained within any apartment building located on any of the Properties. In the event any Lot is increased or decreased in size by re-subdivisions, through recordation of new subdivision plats, any such newly platted Lot shall thereafter constitute a Lot for the purposes of this Declaration.

Section 16. "Master Association" shall mean and refer to the Kinderton Village Residential Homeowners Master Association, Inc., a nonprofit corporation organized and existing under the laws of the State of North Carolina, its successors and assigns.

Section 17. "Member" shall mean and refer to every Sub-Association of Homeowners in Kinderton Village which association holds membership in the Master Association.

Section 18. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot, as hereinafter defined, which is a part of the Property, including contract sellers and owners of an equity of redemption, but excluding those having such interest in a Lot solely as security for the performance of an obligation. In the case of apartments, the "Owner" is the owner of the fee simple title to the real estate.

Section 19. "Properties" or "Property" shall mean and refer to all of the land which makes up the residential portion of Kinderton Village and which is subject to this Declaration and any supplementary Declaration or annexation permitted under the provisions of Article II hereof.

Section 20. "Single-Family Home" shall mean a single-family residence upon any Lot other than a Lot lying within the area designated by a recorded plat for Townhouses, Condominiums, or Apartments.

Section 21. "Special Assessments" shall mean an assessment of funds against the membership of the Sub-Association or Master Association applicable to that year only for the purpose of defraying, in whole or in part, the cost of any capital improvement, repairs or replacement of any capital improvement, repairs or replacement of any improvement on the General or Limited Common Areas, and repair or replacement of the paving on the private streets and any private easements created by the Declarant to provide access to more than one (1) Lot.

Section 22. "Sub-Association" shall mean and refer to the residential-use homeowners associations, including, but not limited to, single family homeowners association(s), townhouse association(s), condominium association(s), or apartment association(s) formed (or to be formed) within Kinderton Village which are members of the Master Association. Each such Sub-Association shall enforce and administer separate declarations of covenants, conditions and restrictions which reflect the particular type and form of housing development subject thereto.

Section 23. "Townhouse" shall mean any single-family residence built for sale as a part of a larger building but built on a Lot in an area designated by a recorded plat for townhouse residences, located within a building which is designed to contain more than one private dwelling unit.

## ARTICLE II

Property Subject to This Declaration  
and  
Additions Thereto

Section 1. Property Subject to This Declaration. The property which is and shall be held, transferred, sold, conveyed, and occupied subject to this Declaration is located in Davie County, North Carolina, and is more particularly described as the first phase of the Kinderton Village subdivision as described in Deed Book 319, Page 168, Davie County, North Carolina, and any additions as herein provided.

Section 2. Additions by the Declarant. Without further assent or permit, Declarant hereby reserves the right, exercisable from time to time in its sole discretion, to add properties in the future to the terms and conditions of this Declaration without further limitation and to bring such additional properties, whether or not such additional properties are a part of the original Kinderton Village property, within the jurisdiction of the Master Association through membership in an existing or new Sub-Association.

The additions herein authorized shall be made by filing of record one or more supplementary Declarations in respect to the property to be then subject to this Declaration and which shall extend the jurisdiction of the Master Association to such properties and thereby subject such addition to assessment for its just share of the Master Association's expenses. Each supplementary Declaration may contain such complementary additions and modifications of the covenants, conditions and restrictions contained herein as may be necessary to reflect the different character of the added property; provided, however, any such supplemental Declaration or any such other Declaration shall not revoke or otherwise amend the provisions of this Declaration as this Declaration pertains to the Properties subject hereto.

Section 3. Additions by the Association. The Association may also expand Kinderton Village to include additional property by recording a supplementary Declaration describing the additional property and the intent to subject it to the provisions of this Declaration. Any such supplementary Declaration shall require the affirmative vote of the Members representing more than fifty percent (50%) of the Class A votes and more than fifty percent (50%) of the Class B votes represented at a meeting duly called for such purpose and the consent of the owner of the additional property. In addition, so long as the Declarant owns property subject to this Declaration or which may become subject to this Declaration in accordance with this Article II, Declarant's consent shall be necessary. The supplementary



Declaration shall be signed by the President and Secretary of the Association, by the owner of the additional property, and by the Declarant, if Declarant's consent is necessary.

### ARTICLE III

#### Membership And Voting Rights

Section 1. Membership. Every Sub-Association, its successors and assigns, which is formed pursuant to the terms and conditions hereof to oversee and administer the Properties shall be a member of the Master Association.

Section 2. Voting Rights. Although the Sub-Associations will constitute the membership of the Master Association, each Sub-Association shall have the number of votes in the Master Association matters as is determined by the following provisions:

(a) Class A Lots. Each Sub-Association shall have the number of votes in the Master Association matters as is determined by the number and type of Class A Lots within the development overseen and administered by the Sub-Association. Class A Lots shall be all Lots except Class B Lots as the same are hereinafter defined. The voting rights in the Master Association matters attributable to each Sub-Association on the basis of Class A Lots shall be as follows:

(1) Townhouses. A Sub-Association which oversees and administers townhouses shall be entitled to one vote for each designated Lot within such townhouse subdivision as shown on the recorded plat of such subdivision.

(2) Single-Family Homes. A Sub-Association which oversees and administers single-family homes shall be entitled to one vote for each designated Lot within such single-family subdivision as shown on the recorded plat of such subdivision.

(3) Condominiums. A Sub-Association which oversees and administers condominium units shall be entitled to one vote for each designated Condominium Unit within such condominium subdivision as shown on the recorded plat or other record of ownership of such condominium development.

(4) Apartments. A Sub-Association which oversees and administers the apartment buildings shall be entitled to one vote for each designated Apartment Unit within the apartment association.

(b) Class B Lots. The Declarant shall have the number of votes in the Master Association matters as is determined by the number of Class B Lots within the Properties. Class B Lots shall be all Lots within the Properties owned by Declarant. The Declarant shall be

entitled to three (3) votes for each Class B Lot designated by a recorded plat for the development of Townhouses, Single-Family Homes, Condominium Units, and Apartment Units.

(c) Representative. Each Sub-Association which is a member of The Master Association, shall elect or otherwise designate one (1) representative from such sub-association to vote on its behalf at all meetings of the Master Association and on all Master Association matters. Such representatives shall be entitled to cast the number of votes for such Sub-Association as is determined in accordance with this Article III.

#### ARTICLE IV

##### Common Areas Property Rights

Section 1. Purpose. There shall be two types of common areas in Kinderton Village, General Common Areas and Limited Common Areas, as defined hereinabove, and as so designated on the recorded plats of Kinderton Village.

##### Section 2. General Common Areas

A. Use of General Common Areas. Every Owner and tenant of any Apartment (through membership in a Sub-Association and the Sub-Association's membership in the Master Association) shall have a nonexclusive right and easement of access to and enjoyment in and to the General Common Areas which shall be appurtenant to and shall pass with the title for every Lot subject to the provisions of this Declaration and other Governing Documents, but such rights of enjoyment shall be subject to the following:

(a) The right of the Master Association and the applicable Sub-Association to limit the use of the General Common Areas to Owners and tenants of any Apartments, their families and guests and the members of Sub-Associations and other Sub-Associations which are a members of this Master Association.

(b) The right of the Master Association and the applicable Sub-Association to suspend the voting and enjoyment rights of an Owner for any period during which any assessment against his or her Lot remains unpaid.

(c) The right of the Master Association to mortgage, to dedicate or to transfer all or any part of the General Common Areas to any public agency, authority, utility, or other entity for such purposes and subject to such conditions as may be agreed to by a majority vote of the members of the Master Association. No such dedications or transfer shall be effective unless the action of the Members is evidenced by a signed and recorded written document.

provided that this Section shall not preclude the Board of Directors of the Master Association from granting easements for the installation and maintenance of electrical, telephone, cablevision, water and sewerage, utilities and drainage facilities upon, over, under and across the General Common Areas without the assent of the membership when such easements are requisite for the convenient use and enjoyment of the General Common Areas or such easements are needed for the use and development of Kinderton Village and will not materially alter the nature and character of the General Common Areas.

(c) The foregoing notwithstanding, the Declarant expressly reserves the right for itself and any builders who purchase Lots in Kinderton Village who have received written permission from the Declarant, to construct and maintain upon portions of the General Common Areas and Limited Common Areas such facilities and activities as Declarant, in its sole discretion, may determine is reasonably required, convenient, or incidental to the construction or sale of residences on the Lots, including but not limited to, construction trailers, model homes, sales offices, signs, and the storage of building materials. Declarant and those authorized by the Declarant shall have all of the necessary easements for access and use of such common areas at no charge.

B. Delegation of Use. The right and easement of enjoyment granted to every Owner in Section One of this Article may be exercised by members of the Owner's family, and an Owner may delegate his or her rights of enjoyment in the General Common Areas to his or her tenants or contract purchasers who occupy the residence of the Owner within the Properties.

C. Title to the General Common Areas. The Declarant hereby covenants for itself, its successors and assigns, that it will convey fee simple title to the General Common Areas, if any, shown on the aforementioned recorded plats to the Master Association, free and clear of all encumbrances and liens, except easements of record, easements provided for or reserved herein, and easements to governmental authorities. Similarly, Declarant will convey to the Master Association any General Common Areas which are part of this development as those portions are annexed in the future.

D. Parking Regulations for Boats, Trailers, etc. The Master Association may regulate the parking of boats, other watercraft, trailers, motor homes, recreational vehicles, golf carts, stored or inoperable vehicles, equipment, and other such items on the General Common Areas (including the provision of special facilities for which a reasonable charge may be made). Nor shall any such vehicles, boats, or equipment be parked within the right-of-way of any public or private street in or adjacent to the Property; provided however, the Board may (but shall not be obligated to) grant permission for visitors to temporarily park such vehicles on streets for a period not to exceed seven (7) days while visiting the occupants of a Lot.

E. Antennas and Satellite Dishes. The Master Association may regulate or prohibit the erection of any type of antennas, including but not limited to, CB, TV, Video, and Short Wave, on any General Common Areas.

F. Rules and Regulations. The Board of Directors of the Master Association shall have the power to formulate, publish and enforce reasonable rules and regulations concerning the use and enjoyment of the General Common Areas, including all rules regarding the use of the lakes located on the General Common Areas. Such rules and regulations, along with all policy resolutions and policy actions taken by the Board of Directors, shall be recorded in a Book of Resolutions, and the Book of Resolutions shall be maintained in a place convenient to the Owners and available to them for inspection during normal business hours.

G. Agreement with Sub-Associations. The Master Association hereby covenants and agrees that any Sub-Association which becomes a member of the Master Association and the individual Owners who are members of the Sub-Associations will have the right to use and enjoy the General Common Areas and, reciprocally, the obligation to contribute to the maintenance and upkeep of the General Common Areas.

### Section 3. Limited Common Areas.

A. Use of Limited Common Areas. The Limited Common Areas are reserved exclusively for the use and benefit of the Owners and tenants of a particular Sub-Association. By way of illustration, Limited Common Areas may include entry signs and entry landscaping, recreational facilities, other landscaping and other Amenities within a particular Sub-Association. All costs associated with the maintenance, repair, replacement, and insurance of any Limited Common Areas shall be at the sole expense of the Sub-Association and paid from the Sub-Association assessments allocated among its Owners.

B. Delegation of Use and Rules and Regulations. The delegation of use and the rules and regulations of the Limited Common Areas shall be as set forth in the Sub-Association Declaration of Covenants, Conditions and Restrictions.

C. Reservation by Declarant. Notwithstanding having designated certain Limited Common Area to a particular Sub-Association, the Declarant reserves the right to later dedicate said Limited Common Area for the non-exclusive use of other Sub-Associations, so long as said additional Sub-Associations share in the common expense of said Limited Common Areas on a pro rata basis, based on the number of Lots in each Sub-Association.

D. Use by Others. Upon approval by a majority of the Members of the Sub-Association to which particular Limited Common Area has been dedicated, the Sub-Association

may permit Owners who are not Members of the Sub-Association, but who are Owners within Kinderton Village, to use all or a portion of such Limited Common Area upon payment of a reasonable user fee as established by the Sub-Association Board of Directors.

E. Title to the Limited Common Areas. The Declarant hereby covenants for itself, its successors and assigns, that it will convey fee simple title to the Limited Common Areas, if any, shown on the recorded plats of the Sub-Association property to the Sub-Association (or to the developer of the Sub-Association property as a part of the Sub-Association property), free and clear of all encumbrances and liens, except easements of record, easements provided for or reserved herein, and easements to governmental authorities.

## ARTICLE V

### Covenants for Maintenance Assessments

Section 1. Annual Assessment for Maintenance Fund. For each Lot owned within the Properties, each Sub-Association covenants and agrees to collect and pay to the Master Association from each Owner within the subdivision overseen and administered by such Sub-Association, and every Owner covenants, and each subsequent Owner of any such Lot, by acceptance of a deed therefor, whether or not it is so expressed in such deed, is deemed to covenant and agree to pay to the Master Association (through payment to the applicable Sub-Association and subsequent payment to the Master Association):

(a) Annual Assessments or charges for the creation and continuation of a maintenance fund as established by the Board,

(b) Special Assessments as approved by the Master Association, to be established and collected as hereinafter provided.

The Annual Assessment provided for herein for the Master Association shall be payable in advance on an annual basis by every Sub-Association, unless the Master Association decides by a majority vote to have the assessment payable monthly. The Annual Assessment shall be due on January 1 of each year. The assessment shall begin to accrue from the date of closing the sale of a lot to the ultimate Owner, not the builder or other developer.

Section 2. Purpose of Assessments. The assessments levied by the Master Association shall be used to provide funds for such purposes and common expenses as are for the benefit of the Master Association, the Sub-Associations, and the Owners, their tenants, guests, and invitees, which purposes may include, but are not limited to, maintenance, repair, insurance, landscaping and beautification of the General Common Areas and enforcement of the rules,

regulations and restrictions provided for in the Governing Documents, and which purposes shall specifically include;

(a) the payment of electric bills for decorative street lighting whether or not such lighting is installed in the General Common Areas or the Limited Common Areas or along or in the public or private streets,

(b) maintenance of the private streets,

(c) maintenance and liability for the common sewer lift station necessary to pump sewage across Interstate 40 to the sewer force main located near NC Highway 158.

Funds may also be used to provide other services to promote the health, safety and welfare of the Owners and in particular for the acquisition, improvement and maintenance of the properties, services and facilities related to the use and enjoyment of the General Common Areas, including but not limited to the cost of repair, replacement and additions thereto; the cost of labor, equipment, materials, management and supervision thereof; the payment of taxes assessed against all General Common Areas; the procurement and maintenance of insurance; the employment of attorneys, accountants and other professionals to represent the Association when necessary or useful; the employment of security personnel to provide any service which is not readily available from any governmental authority; and such other needs as may arise. Any additional uses and purposes for assessments may be adopted by an amendment to this Declaration, as provided in Article IX herein.

Section 3. Creation of the Lien and Personal Obligation of Assessments. To secure payment of any assessment, as each assessment becomes due, there shall arise a continuing lien and charge against each Lot, the amount of which shall include costs and reasonable attorneys' fees to the extent permissible by law. Each such assessment, together with such interest, costs and reasonable attorneys' fees shall also be the personal obligation of the person who was the Owner of such Lot at the time when the assessment fell due; such personal obligation shall not pass to successors in title unless expressly assumed by them, provided such assumption shall not relieve such Owner of such obligation if the same is not paid when due by the successor assuming it.

Section 4. Exempt Property. The assessments, charges and liens created under this Article V shall not apply to the Limited Common Areas, the General Common Areas, nor shall it apply to any Lot the title to which is vested either in any first mortgagee subsequent to foreclosure or in the Secretary of Housing and Urban Development or the Administrator of Department of Veterans' Affairs or any other State or Federal governmental agency which acquires title by reason of such agency's guarantee or insurance of a foreclosed mortgage loan;

provided, however, that, upon the resale of such property by such first mortgagee or such governmental agency, the assessment herein provided shall again commence and accrue and shall be fully applicable to such Lot upon the conveyance to any subsequent Owner. Any Lot which becomes vested in the Master Association or which Declarant may hereafter designate for common use as part of any common areas or otherwise shall be exempt from the assessments and charges created herein. In addition, all property dedicated to and accepted by a local public authority, all land granted to or used by a utility company, all properties owned by a charitable or nonprofit organization exempt from taxation under the laws of the State of North Carolina shall be exempt from the assessments, charges and liens created hereby.

Section 5. Annual Assessment. The Annual Assessment shall be set each year by the Board of Directors of the Master Association as provided in Section Eight hereunder and in the Master Association's Bylaws.

Section 6. Special Assessments. In addition to the Annual Assessment authorized above, the Master 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, the cost of any capital improvement, repairs or replacement of any capital improvement, repairs or replacement of any improvement on the General Common Areas, including the repair or replacement of the paving on the private streets and private easements created by the Declarant to provide access to more than one Lot. Provided that any such assessment by the Master Association shall have the consent of fifty-one percent (51%) of the votes of all Owners of Lots not owned by the Declarant as cast by the representative to the Master Association at a meeting duly called for this purpose in accordance with the provisions of the By-Laws. Any such Special Assessment passed by the Master Association shall not apply to the Declarant.

Section 7. Payment of Assessment by Declarant. Notwithstanding anything in this Article V to the contrary, the Declarant shall at no time be required to pay, in any form, the Annual Assessment or any Special Assessment imposed by the Master Association or any Sub-Association.

Section 8. Notice and Quorum for Any Action Authorized Under Sections Five and Six. Written notice of any meeting called for the purpose of taking any action authorized under Sections 5 and 6 of this Article shall be sent to the designated representative of each Sub-Association not less than ten (10) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence in person or by proxy of representatives of Sub-Associations entitled to cast thirty percent (30%) of all the votes shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (½) of the

required quorum at the preceding meeting. No such subsequent meeting shall be held less than six (6) months following the preceding meeting.

Section 9. Date of Commencement of Annual Assessment; Due Dates; Certificate of Payment. At least thirty (30) days before January 1 of each year, the Board of Directors shall establish the amount of the Annual Assessment against each Lot, and in the event the Board elects not to fix such assessment rate as herein provided, the amount of the prior year's Annual Assessment shall be the fixed amount. Written notice of any changed assessment rate shall be sent to the Board of Directors of each Sub-Association. The due dates for the payment of Annual Assessment and Special Assessments shall be established by the Board of Directors. The Master Association shall, upon demand and for a reasonable charge, furnish a certificate signed by an officer of the Master Association setting forth whether the assessments on a specified Lot have been paid to date.

Section 10. Assessment Rate. The Annual Assessment for the Lots within the Properties shall be fixed by dividing the annual budget amount or Special Assessment by the number of Lots contained within all Sub-Associations made subject to this Declaration; the quotient of such division shall be each Lot's share of such Annual Assessment or Special Assessment.

Section 11. Effect of Nonpayment of Assessment; Remedies of the Master Association. Unless the Board of Directors of the Master Association directs otherwise, the Sub-Associations shall collect the Annual and Special Assessments from the Owners along with the assessments for the Sub-Association, and shall remit the Annual Assessments and Special Assessments for the Master Association to the Master Association. The Sub-Associations will be primarily responsible for collecting any past due Annual or Special Assessments. All assessments not paid within thirty (30) days after the due date together with interest from the due date at the rate of eighteen percent (18%) or such other rate as the Board may establish (to the extent allowed by law), late charges as determined by Board resolution, costs, and reasonable attorneys' fees shall be the personal obligation of each Owner and a lien upon each Lot until paid in full, whether or not any notice of lien has been filed with the Office of the Clerk of Superior Court for David County, NC. The Master Association, its agent or representative, or the applicable Sub-Association, its agent or representative, may bring an action at law against the Owner personally obligated to pay the same or foreclose the lien against the Lot to which the assessment relates, and interest, costs and reasonable attorneys' fees for such action or foreclosure shall be added to the amount of such assessment to the extent allowed by law. An Owner may not waive or otherwise escape liability for the assessments provided for herein by non-use of the General Common Areas or abandonment of his or her Lot. No diminution or abatement of assessments shall be claimed or allowed for any alleged failure of the Master Association or Board to take some action or perform some function required of



it, or for inconvenience or discomfort arising from the making of repairs or improvements, or from any other action it takes.

Section 12. Subordination of the Lien to Mortgages. The liens provided for herein shall be subordinate to the lien of any deed of trust (sometimes hereinafter called "mortgage") on any Lot if, but only if, all such assessments with respect to such Lot having a due date on or prior to the date such mortgage is filed for record have been paid. The lien and permanent charge hereby subordinated is only such lien and charge as relates to assessments authorized hereunder having a due date subsequent to the date such mortgage is filed of record and prior to the satisfaction, cancellation or foreclosure of such mortgage or the sale or transfer of the mortgaged property pursuant to any proceeding in lieu of foreclosure or the sale or transfer of the mortgaged property pursuant to a sale under power contained in such mortgage. Sale or transfer of any Lot to a New Owner shall not affect any assessment lien, unless the sale or transfer of the Lot is pursuant to a foreclosure or under a power of sale or any proceeding in lieu of foreclosure, and in that event shall extinguish the lien of such assessment as to payments which became due prior to such sale or transfer, but the Master Association and the applicable Sub-Association shall have a lien upon the proceeds from foreclosure or of sale junior only to the said foreclosed first mortgage and the equity of redemption of the mortgagor or trustor. No sale or transfer shall relieve such Lot from liability for any assessment thereafter becoming due or from the lien thereof.

## ARTICLE VI

### Architectural and Landscaping Control, Inspection and Use Restrictions

Declarant shall have the responsibility of enforcing the restrictions set forth in this Article prior to the formation of the Committee, which, upon appointment by the Board of Directors, shall assume and be responsible for enforcement of these restrictions. References in this Article to "Committee" shall mean "Declarant" until the Committee is appointed and references to "Declarant" shall mean "Committee" once it is appointed. The following architectural restrictions shall apply to each and every Lot and building now or hereafter subject to this Declaration, and references to "Lot" in this Article VI shall include the building constructed for townhouses, condominiums and apartments.

#### Section 1. Approval of Plans and Architectural Committee.

(a) No site preparation or initial construction, erection, or installation of any improvements, including, but not limited to, dwellings, outbuildings, landscaping (including installation and removal), fences, walls, signs, antennas, mailboxes, post lamps, and other structures, shall be undertaken upon the Lots unless the plans and specifications therefor,

showing the nature, kind, shape, height, materials, color and location of the proposed improvements on the Lot, including but not limited to, the house, decks, garage, driveway, parking areas, plants, shrubs, trees (including trees to be removed), and any other permanent structures or changes to be made to the Lot, shall have been submitted to the Committee and expressly approved in writing. No subsequent alteration or modification which will result in an exterior, structural change to the dwelling, outbuilding, or significant changes to the landscaping may be undertaken on any of the Lots without the prior review and express written approval of the Committee. This shall include, without limitation, signs; basketball goals, swing sets and similar sports and play equipment; clotheslines; garbage cans; woodpiles; above-ground and in-ground swimming pools; hedges; walls; dog runs and animal pens; and fences of any kind. The dwelling constructed on the Lot, including buildings which house townhouses, condominiums, and apartments, must meet, in the sole discretion of the Committee, the minimum requirements of the Architectural Guidelines to be considered for approval by the Committee.

(b) In the event that the Committee fails to approve or disapprove the site or design of any proposed improvements within sixty (60) days after plans and specifications therefor have been submitted and received, approval will not be required, and the requirements of this Article will be deemed to have been fully met; provided, that the plans and specifications required to be submitted shall not be deemed to have been received by the Committee if they contain erroneous data or fail to present adequate information upon which the Committee can arrive at a decision.

(c) For purposes of Section 1, subparagraph (b) above, plans and specifications will not be deemed to have been "received" unless the Declarant acknowledges in writing such receipt or the plans and specifications are sent by certified or registered mail to the Declarant, and a return receipt is received acknowledging the receipt thereof.

(d) The Committee shall have the right, at its election, to enter upon the Lots during site preparation or construction, erection or installation of improvements to inspect the work being undertaken and to determine that such work is being performed in conformity with the approved plans and specifications and in a good and workmanlike manner, utilizing standard industry methods and good quality materials.

(e) In reviewing the plans and specifications, the Committee may consider all factors it deems relevant, including, without limitation, harmony of external design with surrounding structures and environment. Decisions may be based on purely aesthetic considerations. Each Owner acknowledges that determinations as to such aesthetic matters are purely subjective and opinions may vary as to the desirability and/or attractiveness of particular improvements and that the determination of the Committee as to aesthetic judgment shall be final and shall not be subject to judicial review so long as exercised with the procedures set forth in

this Article. Each Owner acknowledges that the members of the Committee will change from time to time and that opinions on aesthetic matters, as well as interpretation and application of the Architectural Guidelines, may vary accordingly.

(e) The approval of any such plans, specifications or other items submitted to the Committee pursuant to this Article VI is made on the basis of aesthetic considerations only and shall not impose any liability or responsibility on the Committee or the Master Association with respect to either the compliance or non-compliance of any such plans, specifications or other items (including any improvements or structures erected in accordance therewith) with applicable zoning ordinances, building codes or other governmental or quasi-governmental laws, ordinances, rules and regulations or defects in or arising from such plans, specifications or other items (including, without limitation, defects relating to engineering matters, structural and design matters and the quality or suitability of materials).

(f) Any Owner may request that the Committee issue a certificate of architectural compliance certifying that there are no known violations of this Article or the Architectural Guidelines. The Committee shall either grant or deny such request within thirty (30) days after receipt of the written request and may charge a reasonable administrative fee for issuing such certificates. Issuance of such a certificate shall estop the Association from taking enforcement action with respect to any condition as to which the Association had notice as of the date of the certificate.

(g) For so long as Declarant owns a Lot in Kinderton Village, or until such time as the Declarant notifies the Board of Directors in writing of its desire to have the Master Association elect the members of the Committee, the Declarant shall serve as the Committee, and shall exercise the authority to approve plans and other matters set forth in this Article. After Declarant divests itself of all Lots within the Property, or so notifies the Master Association, the Committee shall be elected by a majority of the votes of the Members, cast in person or by proxy, at a meeting duly called for this purpose.

(h) The exterior maintenance of the dwellings located on a Lot and other improvements constructed thereon, if any, shall be the duty and responsibility of the Owner of such Lot or Sub-Association, as the case may be, and shall not be the responsibility of the Master Association. If, however, in the opinion of the Board of Directors, any Owner fails to discharge his or her repair, maintenance or upkeep responsibilities in a reasonable and prudent manner to a standard harmonious with that of the other Lots in Kinderton Village, the Board, at its discretion, and following ten (10) days written notice to the Owner, may enter upon and make or cause to be made maintenance work or repairs as may be deemed reasonably required by the

Board. The Master Association, or its agents, shall have an easement for the purpose of accomplishing the foregoing. The costs incurred by the Master Association in rendering such services plus a charge of twenty percent (20%) of such costs, shall be added to and become a part of the assessments to which such Lot is subject.

(i) The Declarant shall be solely responsible for the initial landscaping of the General Common Areas. Once the General Common Areas, or parts thereof, are transferred to the Master Association, the care and maintenance of the landscaping of the General Common Areas shall be a common expense and the responsibility of the Master Association.

(j) The cost of landscaping on each Lot and the cost of repair and maintenance and upkeep of Limited Common Areas within or peculiar to a Sub-Association shall be the sole expense of the Owner or the Sub-Association, as the case may be.

## Section 2. Use Restrictions Applicable to all of Kinderton Village.

The following use restrictions shall apply to all of the property subject to this Declaration, including property within the Sub-Associations. Any conflict between these use restrictions and the use restrictions of a Sub-Association shall be resolved in favor of the following use restrictions, it being understood that the following use restrictions shall control.

(a) All structures must be built to comply substantially with the plans and specifications as approved by the Committee, and before any house may be occupied it must be completely finished and a certificate of completion must have been issued by the local or state authority empowered to do so.

(b) All Lots (including condominium units, townhouses, and apartment units) shall be used for single-family residential use only. No building shall be erected, built, placed or permitted to remain on any Lot that exceeds three (3) stories in height (excluding finished attic space). Any additional building or out buildings which an Owner wants to construct on a Lot must be approved in writing by the Committee.

(c) No Lot shall be used for the operation of any kind of business, including fractional-sharing, or similar program whereby the right to exclusive use of the Lot is shared among participants in the program on a fixed or floating time schedule over the year.

(d) Lot boundaries may not be changed without the consent of the Committee.

(e) Each Owner must provide on the Lot at least one additional parking space (which may be on the driveway) for off-street parking, over and above the parking spaces in

garages or carports. Notwithstanding any of the foregoing, the location of any detached garage or carport must be approved by the Committee.

(f) No permanent structures shall be erected having exposed exterior walls of concrete blocks, and all driveways must be paved with either concrete or brick pavers.

(g) No Lot shall be used as a street or other type of access for any adjoining tracts of land whether or not they are a part of the Property, unless the Declarant gives its written consent, which consent may be withheld in its sole discretion.

(h) Building setback requirements shall be as shown on the recorded plats of the Properties or in the Architectural Guidelines. All other setback requirements shall be as required by applicable zoning unless otherwise designated on the recorded plat(s).

(i) No business, profession, professional clinic or other trade or business activity shall be carried on upon any Lot or in any building erected thereon except a Lot Owner may use one room of the residence as a home office, provided there is nothing visible from outside the residence to indicate a room is being used as an office; there are no business clients or members of the general public coming to the residence because of the business being conducted in the residence; and there is nothing being done in the residence which may be or become an annoyance or nuisance to the neighborhood.

The terms "business" and "trade", as used in this paragraph, shall be construed to have their ordinary, generally accepted meanings and shall include, without limitation, any occupation, work, or activity undertaken on an ongoing basis which involves the providing of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether, (i) such activity is engaged in full or part-time, (ii) such activity is intended to or does generate a profit, or (iii) a license is required for the activity. Notwithstanding the foregoing, nothing herein shall prevent the Declarant or any builder from conducting any activity with respect to the development of Kinderton Village or the construction and sale of dwellings therein.

(j) No trailer, basement, tent, shack, garage, barn or other outbuilding erected on the Lots shall be used at any time as a residence, temporarily or permanently, nor shall any structure of any temporary character be used as a residence. This restriction shall not apply to construction trailers used during the construction of improvements on the Lot.

(k) No stable, barn, or out building shall be erected or allowed to remain on any Lot for domestic animals. No animals, livestock or poultry of any kind shall be raised, bred, pastured or maintained on any Lot, except standard household pets which may be kept thereon

in reasonable number as pets for the sole pleasure and purpose of the occupants and not for any commercial use or breeding purpose. Any standard household pets which are permitted by this paragraph shall be kept primarily within the residence and shall not be housed outside of the dwelling. No housing, cages, pens, fences, or enclosures shall be located on any Lot for purposes of housing or restraining such pets. No pets shall be permitted in or upon the General Common Areas or Limited Common Areas unless restrained by a leash. The walking of any pet on streets, General or Limited Common Areas or Lots belonging to others, for the purposes of allowing pets to relieve themselves of bodily wastes, is prohibited and the pet owner shall be responsible for retrieving any excrement deposited by his or her pet in the event of an infraction, depositing of such waste.

(l) No property in the subdivision shall be used for the sale of any items, including automobiles, nor shall inoperable automobiles, automobiles which are not used on a regular basis, or other debris, trash or storage items be allowed to accumulate or to remain on any Lot of the subdivision.

(m) Declarant reserves an easement for, and the right at any time in the future to grant, rights-of-way for the installation and maintenance of public utilities across, on or under any Lot along the front, rear and side property lines, but such rights-of-way must be used so as to interfere as little as possible with the use of the Lot by its Owner. Further, there is reserved on behalf of Declarant and the standard utility companies for electricity, telephone, cable, natural gas, and any other standard utility company which has been approved by the Committee, an easement to enter upon the premises to maintain, repair, or modify existing or future underground facilities, and the Owners, or their successors in title to said Lots, shall in no way interfere with said facilities, or dig up, cut or tamper with said facilities except at their own peril and in violation of the rights of said utility companies. No public utility company or governmental entity or agency shall obtain any right in the easement reserved herein without an express written and recorded grant thereof by Declarant. In the event the Property subject to this Declaration is served by any underground public utility facilities, the service to structures erected thereon shall be connected to the underground facility at the pedestals provided for this purpose.

(n) Decorative fencing of good quality may be erected, but the quality, style, color, and location of said fencing must be approved by the Committee. Fencing must be maintained in a good state of repair.

(o) No communications or television receiving dish, antenna or similar structure may be erected or placed on any Lot, or on any building on any Lot, except a satellite dish less than one (1) meter in diameter. Before installing a satellite dish less than one (1) meter in diameter, the Lot Owner must make a good faith effort to locate the dish in the rear yard area and

screen the dish such that the dish is not visible from any Lot, the street or any General or Limited Common Areas. The screening for the dish must be approved by the Committee.

(p) Incinerators for garbage, trash or other refuse shall not be used or permitted to be erected or placed on any Lot. Any and all equipment, coolers, woodpiles, garbage cans, refuse or storage piles placed on a Lot (whether temporary or permanent) shall be screened to conceal same from the view of adjoining Lots, roads, streets, or General or Limited Common Areas. Plans for all screens, walls and enclosures must be approved by the Committee prior to construction.

(q) No leaves, trash, garbage or other similar debris shall be burned on any Lot or General or Limited Common Area. No garbage, trash, construction debris or other unsightly or offensive materials shall be placed upon any portion of the Lot, except as is temporary and incidental to the bona fide improvement of any portion of the Lot.

(r) No lumber, brick, stone, cinder block, concrete or other building materials, scaffolding, mechanical devices or any other thing used for building purposes shall be stored on any Lot except for the purpose of construction on such Lot or for the purpose of staging materials for construction of improvements on other Lots if the Declarant or builder designates the Lot as a staging area for such construction materials. In either event, such materials shall not be stored on the Lot for longer than the length of time reasonably necessary for completion of the improvement(s) in which same is to be used.

(s) No exposed above-ground tanks will be permitted for storage of fuel or water or any other substance.

(t) No Owner shall excavate or extract earth from any of the Lots subject to this Declaration for any business or commercial purpose. No elevation changes shall be permitted which materially affect surface grade of surrounding Lots.

(u) No outside toilet facility may be constructed or maintained on any Lot except during construction of improvements on any Lot.

(v) Outside clotheslines and such clothes-handling devices will not be permitted.

(w) Individual mailboxes or mail receptacles are prohibited on the Lots, unless permitted on an individual basis by the Committee. Community mail collections stations will be provided by the Declarant and maintained by each Sub-Association.

(x) No sign of any kind whatsoever shall be erected upon or displayed or otherwise exposed to view on any Lot or any improvement thereon, except for standard realtor "for sale" signs (no subcontractor's signs or lender's shall be allowed).

(y) No house trailer, motor home, boat, boat trailer, camper, trailer, vessel, motorcycle or other recreational vehicle shall be permitted on any Lot unless such trailer, boat, camper, motorcycle or other vehicle is kept within the garage with the garage door closed and not visible from any adjoining Lot or Lots, streets or General or Limited Common Areas. The intention of this restriction to prevent the parking of any such vehicles in the parking area of the Lot other than the Owner's or the Owner's invitees' passenger automobiles and pickup trucks. No vehicle which contains any commercial printing or signs on the vehicle may be parked on a Lot unless it is either parked within a closed garage or is temporarily parked on the Lot by an invitee of the Owner. Notwithstanding the foregoing, the Board of Directors may, but shall not be obligated to, grant permission for visitors to temporarily park such vehicles overnight on driveways or streets for a period not to exceed seven (7) days or nights while visiting the occupants of a Lot.

(z) All motorized vehicles operating on any Properties, Lots, General or Limited Common Areas and streets of Kinderton Village, whether public or private streets, must be operated in a safe and proper manner and must have proper mufflers so as to eliminate noise which might be offensive to others. Minibikes and similar two, three, or four-wheeled vehicles are prohibited from being used or operated on or within Kinderton Village, unless the prior written consent of the Board of Directors is first secured.

(aa) No temporary structure or storage building shall be permitted on any Lot unless screened from view of adjoining Lots, streets or General and Limited Common Areas; provided, however, temporary buildings and other structures shall be permitted during the construction period of the dwellings on Lots. No garage, outbuilding or other appurtenant structure shall be used for residential purposes, either temporary or permanently, except for a finished room or rooms which are a part of the attached garage, without the written consent of the Committee.

(bb) Trees may be removed, where necessary, for the construction of driveway, and dwellings or if located within six (6) feet of the foundation of the house or garage or swimming pool. All other trees over four (4) inches in diameter (measured eighteen (18) inches from the surface of the ground) shall be retained unless their existence creates a hazard to the property.



(cc) The Use Restrictions set forth in this Section 2 shall not apply to Lots during the period of construction of the dwelling unit upon the Lots. As soon as a dwelling unit has been completed on a Lot, these Use Restrictions shall immediately apply to the Lot.

(dd) In all cases the Use Restrictions set forth or provided for in this Section 2 shall be construed together and shall be given that interpretation or construction which will best tend toward their strict enforcement, and, if necessary, they shall be so extended or enlarged by implication as to make them fully effective.

Section 3. Hobbies and Activities. The pursuit of hobbies or other inherently dangerous or unsightly activities including specifically, without limiting the generality of the foregoing, the assembly and disassembly of motor vehicles and other mechanical devices which might tend to cause disorderly, unsightly or unkempt conditions; the shooting of firearms, fireworks or pyrotechnic devices of any type or size; and such other activities shall not be pursued or undertaken on any part of any Lot or the General and Limited Common Areas without the consent of the Board of Directors of the Master Association.

Section 4. Nuisances and Unsightly Materials. Each Owner shall refrain from any act or use of his or her Lot which could reasonably cause embarrassment, discomfort, annoyance or nuisance to the neighborhood. No noxious, offensive, unsafe or illegal activity shall be carried on upon any Lot. No Lot shall be used in whole or in part for storage of rubbish of any character whatsoever; nor shall any substance, thing or material be kept upon any Lot which will emit foul or noxious odors or which will cause any noise that will or might disturb the peace and quiet of the occupants of surrounding property. No trash, rubbish, stored materials, wrecked or inoperable vehicles or similar unsightly items shall be allowed to remain on any Lot outside an enclosed, covered structure. However, the foregoing shall not be construed to prohibit temporary deposits of trash, rubbish and other debris for pickup by garbage and trash removal service units. Each Owner shall maintain the improvements on the Lot in a neat and orderly manner. In the event any Owner of any Lot fails or refuses to maintain the improvements and the Lot in a neat and orderly manner or to keep the Lot from accumulating any of the foregoing unsightly items, weeds or underbrush, the Master Association may, at its option, ten (10) days after posting a notice thereon or mailing a notice to said Owner at his or her property address requesting Owner to comply with the requirements of this Section, enter and remove all such unsightly items and growth at said Owner's expense, and such Owner shall be personally liable to the Master Association for the costs of removal, and the costs, until paid, and said costs shall be a permanent charge and lien upon such Lot enforceable to the same extent and collectible as provided for in Article V, entitled "Covenants for Maintenance Assessments". By acquiring property subject to these restrictions, each and every Owner agrees to pay such costs promptly upon demand by the Master Association, its agents, assigns, or representatives. No such entry

as provided in this Section shall be deemed a trespass. The provisions of this Section shall not apply to Lots upon which houses are under construction.

Section 5. Governmental Regulations. Each Owner shall observe all governmental building codes, health regulations, zoning restrictions and other regulations applicable to his or her Lot. In the event of any conflict between any provision of any such governmental code regulation or restriction and any provision of the Governing Documents, the more restrictive provision shall apply.

Section 6. Other Prohibitions or Requirements.

(a) No vent or other pipes or appendages may extend from the front of any dwelling, unless screened from public view by a screening material or shrubbery approved by the Committee.

(b) Any exterior air-conditioning or heating equipment must be screened from public view by a screening material or shrubbery approved by the Committee.

(c) Downspouts and gutters must be so constructed so as not to promote the erosion of the soil of any Lot.

(d) Any outdoor lighting must be shielded so as to cast no direct light upon adjacent Lots.

(e) Use or discharge of any radio, loudspeaker, horn, whistle, bell, or other sound device so as to be audible to occupants of other Lots shall be prohibited, except alarm devices used exclusively for security purposes.

(f) There shall be no trapping or killing of wildlife within the Property, except in circumstances posing an imminent threat to the safety of persons in Kinderton Village and except as expressly permitted by the Board of Directors.

(g) There shall be no activities which materially disturb or destroy the vegetation, wildlife, wetlands, or air quality within Kinderton Village or which result in unreasonable levels of sound or light. This paragraph shall not apply to any activities of the Declarant or any builder in connection with the development of Kinderton Village or the construction and sale of dwellings.

Section 7. Lakes.

(a) Lakes which are shown on the recorded plat(s) of the Property, whether or not so labeled, shall be General Common Areas for the use and enjoyment of every Owner, subject to the rules and regulations of the Master Association. Use of the lakes by the Owners shall not include the use of Lots whose lot lines extend to the high water mark of the lakes, and use of the lakes shall be limited to the areas designated as "General Common Areas" adjacent to the lake or lakes.

(b) Maintenance of the lakes and dams shall be the duty of the Master Association, and no Owner by virtue of owning a Lot adjacent to the lake shall be required to assist in the maintenance of the lake except through the payment of the regular assessment paid by all Owners to the Sub-Association and the Sub-Association's payment to the Master Association.

(c) The Board of Directors shall establish rules and regulations governing the activities which are permitted in and on the lakes, but until said rules and regulations are enacted, there shall be no swimming, boating, use of personal flotation devices, or other active use of the lakes except for fishing from the banks of the lakes in designated areas.

(d) Neither the Declarant, the Master Association, nor any Sub-Association shall be responsible for any loss, damage, or injury to any persons or property arising out of the authorized or unauthorized use of the lakes, ponds, streams or other bodies of water within Kinderton Village.

Section 8. Exception for Declarant and Builders. The rules, restrictions, regulations and prohibitions provided for in this Article VI are intended for the use and protection of the future Owners of Lots in Kinderton Village, and nothing herein shall prevent or prohibit the Declarant or any builder from developing the Properties subject to this Declaration and constructing dwellings thereon so long as said development and construction are within the standards of the Architectural Guidelines.

## ARTICLE VII

### Easements

Section 1. Walks, Drives, Parking Areas and Utilities. All of the Properties, including Lots, townhouse properties, condominium properties, apartment properties, and General and Limited Common Areas, shall be subject to such easements for driveways, walkways, parking areas, water lines, sanitary sewers, storm drainage facilities, gas lines,

telephone and electric power lines, television antenna lines, and other public utilities as shall be established prior to subjecting the properties to this Declaration by the Declarant or its predecessors in title. The Master Association shall have the power and authority to grant and to establish in, over, upon, and across the General and Limited Common Areas such further easements as are requisite for the convenient use and enjoyment of the properties.

Section 2. Utilities and Drainage. All utility lines of every type, including but not limited to water, electricity, natural gas, telephone, sewage and television cables, running from the main trunk line or service locations must be underground. The Declarant reserves unto itself, its successors and assigns, a perpetual, alienable and releasable easement and right on, across, over and under the ground to erect, maintain, replace and use water, sewer, electric and telephone systems, wires, cables, and conduits for the purpose of bringing public services, including television cable service, to the Lots, townhouse properties, condominium properties, apartment properties, and General and Limited Common Areas, said easement to be within (i) ten (10) feet of each lot line or other property line fronting on a street and (ii) twenty (20) feet along the rear line of each lot or other property, (iii) the rights-of-way of any street or road shown on any recorded plat(s) of the Property, and (iv) such other areas as are shown on any recorded plats of the Property; provided further, that the Declarant or Master Association may cut, at its own expense, drainways for surface water wherever and whenever such action is reasonably required in order to maintain reasonable standards of health, safety and appearance. These easements and rights expressly include the right to cut any trees, bushes or shrubbery, take or add any soil, or to take any other similar action reasonably necessary to provide economical and safe utility installation or to maintain reasonable standards of health, safety and appearance.

Section 3. Emergency. There is hereby reserved without further assent or permit, a general easement over the private streets, General and Limited Common Areas to all policemen and security guards employed by Declarant or the Master Association or any Sub-Association, firemen, ambulance personnel and all similar law enforcement and emergency personnel to enter upon the Property, or any property or portion thereof which is now or hereafter made subject to this Declaration, in the performance of their respective duties.

Section 4. Encroachments. The Declarant grants reciprocal appurtenant easements of encroachment, and for maintenance and use of any permitted encroachment, between each lot and any adjacent General or Limited Common Area and between adjacent Lots due to the unintentional placement or settling or shifting of the improvements constructed, reconstructed or altered thereon (in accordance with the terms of these restrictions) to a distance of not more than three (3) feet, as measured from any point on the common boundary along a line perpendicular to such boundary. However, in no event shall an easement for encroachments exist if such encroachment occurred due to the willful and knowing conduct on the part of, or with the knowledge and consent of, the party claiming the benefit of such easement.

Section 5. To Serve Additional Property. The Declarant hereby reserves for itself and its duly authorized agents, successors, assigns, and mortgagees, a perpetual, non-exclusive easement over any of the General or Limited Common Areas for the purposes of enjoyment, use, access, and development of any property brought into the Association by a supplemental Declaration as provided in Article II herein. This easement includes, but is not limited to, a right of ingress and egress over any General or Limited Common Areas for construction of roads and for connecting and installing any and all utilities on such additional property.

Section 6. For Lake Maintenance and Flood Water. The Declarant reserves for itself, the Association, and their successors, assigns and designees, the non-exclusive right and easement, but not the obligation, to enter upon bodies of water and wetlands located on any of the General or Limited Common Areas to (i) install, operate, maintain, and replace pumps to supply irrigation water to any of the General or Limited Common Areas, (ii) construct, improve, maintain, and repair structures and equipment used for retaining or draining water, and (iii) maintain such common areas in a manner consistent with this Declaration or the directives of the Board of Directors. Declarant, the Association, and their successors, assigns and designees shall have an access easement over and across any of the Lots to the extent reasonable necessary to exercise their rights under this Section.

The Declarant further reserves for itself, the Association, and their successors, assigns and designees, a perpetual, non-exclusive right and easement of access and encroachment over the General and Limited Common Areas and the Lots (but not the dwellings thereon) adjacent to or within fifty (50) feet of bodies of water and wetlands within the Property, in order to (i) temporarily flood and back water upon and maintain water over such portions of the Property as is reasonably necessary, (ii) alter in any manner and generally maintain the bodies of water and wetlands within the General or Limited Common Areas, and (iii) maintain and landscape the slopes and banks pertaining to such areas. All parties entitled to exercise these easements shall use reasonable care in use of these easements and repair any damage resulting from the intentional exercise of the easements. Nothing herein shall be construed to make the Declarant or the Association liable for damage resulting from flooding due to heavy rainfall or other natural occurrences.

## ARTICLE VIII

### Insurance

Section 1. Comprehensive General Liability and Property Insurance. Comprehensive general liability and property damage insurance shall be purchased by the Board of Directors of the Master Association and shall be maintained in force at all times, the premiums thereon to be paid by the Master Association as a common expense. If Declarant pays the premium, it shall be entitled to reimbursement from the Master Association. The insurance shall be carried with reputable companies authorized to do

business in the State of North Carolina, in such amounts as the Board may determine. The insurance carrier should have a current rating by Best's Insurance Reports of VI or better, or a financial rating of Class VI and a general policyholder's rating of at least A. If the insurer does not meet this rating requirement, the insurer must be reinsured by a company that does have a current rating by Best's Insurance Reports of VI or better.

A comprehensive policy of general liability insurance shall be in force for a minimum amount of \$1,000,000 per occurrence, covering all claims for bodily injury and/or property damage arising out of a single occurrence, such coverage to include protection against liability for negligence involving automobiles, liability for property of others, and, if applicable, host liquor liability and other risks which are customarily covered with projects similar in construction, location and use. The policy or policies shall name as insured all of the Sub-Associations and the Master Association. Declarant shall also be named as an additional insured on such policy or policies until such time as Declarant shall have conveyed all the Lots within the Property to unrelated third-party purchasers. The policy or policies shall insure against loss arising from perils in the General Common Areas and shall include contractual liability coverage to protect against such liabilities as may arise under the contractual exposure of the Master Association or its Board of Directors.

The Policy or policies shall contain a "severability of interest" clause or endorsement which shall preclude the insurer from denying a claim of an Owner or the Master Association because of negligent acts of the Master Association or other Owners.

**Section 2. Fire and Hazard Insurance.** Fire and other hazard insurance shall be purchased by the Board of Directors of the Master Association and shall thereafter be maintained in force at all times, the premiums thereon to be paid by the Master Association as a common expense, such policy to cover the General Common Areas. The policy or policies shall be of a master or blanket type with a standard all risk endorsement, and insure against loss from perils therein including coverage on all of the improvements in the General Common Areas, except such as may be separately insured, and except land, foundation, excavation and other items normally excluded from coverage. Such policy or policies shall contain extended coverage, vandalism and malicious mischief endorsements. The improvements to be insured under this clause shall be continually insured to value, and the policy or policies shall contain replacement cost insurance. If reasonably available, the policy or policies shall contain a stipulated amount clause, or determinable cash adjustment clause, or similar clause to permit a cash settlement covering specified value in the event of destruction and a decision not to rebuild. The policy or policies shall name as insured all of the Sub-Associations, the Master Association and Declarant, so long as Declarant is the Owner of any Lots. The policy or policies shall also cover personal property owned by the Master Association or in common by any Owner, their tenants, invitees or agents, and shall further contain a waiver of subrogation rights by the carrier as to negligent owners. If Declarant pays the premium for said policy or policies, it shall be entitled to reimbursement from the Master Association.

The insurance shall be carried with reputable companies authorized to do business in the State of North Carolina, in such amounts as the Board of Directors of the Master Association may determine. The insurance carrier should have a current rating by Best's Insurance Reports of VI or better or a financial rating of Class VI and a general policyholder's rating of at least A. If the insurer does not meet

this rating requirement, the insurer must be reinsured by a company that does have a current rating by Best's Insurance Reports of VI or better.

Section 3. Fidelity Insurance Coverage. The Master Association shall provide for fidelity coverage against dishonest acts on the part of the Officers, Directors, Management Contractors, employees or volunteers responsible for handling funds belonging to or administered by the Master Association. The fidelity bond or insurance must name the Master Association as the named insured and shall be written in an amount sufficient to provide protection, which is in no event less than 1.5 (one and one-half) times the insured's estimated annual operating expenses and reserves. In connection with such coverage, an appropriate endorsement to the policy to cover any person or persons who serve without compensation shall be added if the policy would not otherwise cover volunteers. If requested by an Owner or first mortgagee, such policies shall additionally provide that the policies cannot be cancelled by either the insured or the insurance company until after ten (10) days' prior written notice to all who have requested such notice.

Section 4. Flood Insurance. In the event General Common Areas is or shall become located in an area identified by the Federal Emergency Management Agency (FEMA) as an area having special flood hazards, a "blanket" policy of flood insurance must be maintained in the amount of 100% of current "replacement cost" of all such buildings and other insurable property or the maximum limit of coverage available, whichever is less. The name of the insured under each required policy must be stated in form and substance similar to the following:

"The Kinderton Village Residential Homeowners Master Association, Inc. for use and benefit of the Members, individual Residential Owners and their first mortgagees."

Section 5. Other Insurance. The Board of Directors of the Master Association may purchase and maintain in force as a common expense, debris removal insurance, plate or other glass insurance, fidelity bonds and other insurance or bonds that it deems necessary. The Board of Directors of the Master Association shall purchase and maintain worker's compensation insurance to the extent that the same shall be required by law respecting employees of the Master Association.

Section 6. Proceeds. The Master Association shall receive the proceeds of any casualty insurance payments received on the policies obtained and maintained pursuant to this Article. To the extent that repairs and reconstruction are required herein and there is a determination that any improvements on the General Common Areas shall not be rebuilt, the proceeds shall be distributed to the Sub-Association on a pro-rata basis based on the number of Lots in the Sub-Association.

Section 7. Annual Review of Policies. All insurance policies shall be reviewed at least annually by the Board of Directors of the Master Association to ascertain whether the coverages contained in the policies are sufficient for the upcoming year, whether any necessary repairs or

replacements of the property which occurred in the preceding year were covered by insurance, and that all possible insurance claims have been filed.

Section 8. Deductibles. No insurance policy applicable to either fire or extended coverage shall contain a deductible clause which exceeds the greater of:

- (a) \$500.00
- (b) One percent (1%) of the face amount of the policy.

If an Owner, who by a negligent or willful act, causes damage to the General Common Areas which are insured as a common expense, then said Owner shall bear the whole cost of the deductible required in the blanket insurance policy for the Master Association. An Owner shall be responsible for any action of members of his or her family, his or her tenants or his or her guests which causes damage to the General Common Areas.

Section 9. Waivers. All such policies of insurance shall contain waivers of subrogation and waivers of any defense based on an invalidity arising out of the acts of an Owner of property in Kinderton Village or Member.

## ARTICLE IX

### General Provisions

Section 1. Duration. This Declaration and the foregoing restrictions shall be construed to be covenants running with the land and shall be binding and effective for a period of twenty-five (25) years from the date this Declaration is recorded in the office of the Register of Deeds for Davie County, North Carolina, and at the end of which time they shall be automatically extended for successive periods of ten (10) years each unless it is agreed by a majority of the votes entitled to be cast in Master Association matters to change, amend or revoke this Declaration and the restrictions contained herein in whole or in part. Every purchaser, Owner or subsequent grantee of any interest in any Property now or hereafter made subject to this Declaration, by acceptance of a deed or other conveyance therefor, hereby agrees that the covenants and restrictions of this Declaration may be extended as provided in this Article.

Section 2. Amendment. This Declaration may be amended unilaterally at any time and from time to time by Declarant (a) if such amendment is necessary to bring any provision hereof into compliance with any applicable governmental statute, rule, or regulation or judicial determination which shall be in conflict therewith; (b) if such amendment is necessary to enable any reputable title insurance company to issue title insurance coverage with respect to the



Properties subject to this Declaration; (c) if such amendment is required by an institutional or governmental lender or purchaser of mortgage loans, including, for example, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to enable such lender or purchaser to make or purchase mortgage loans on the Lots subject to this Declaration; or (d) if such amendment is necessary to enable any governmental agency or reputable private insurance company to insure mortgage loans on the Properties or individual Lots subject to this Declaration; provided, however, any such amendment shall not adversely affect the title to any Owner's Lot or property unless any such Owner shall consent thereto in writing. Further, so long as Declarant has the right unilaterally to subject additional property to this Declaration as provided in Article II hereof, Declarant may unilaterally amend this Declaration for any other purpose so long as said amendment promotes or makes no change to the common scheme of development; provided, however, any such amendment shall not materially adversely affect the substantive rights of any property owner hereunder, nor shall it adversely affect title to any property without the consent of the affected owner.

Section 3. Procedure for Certification and Recordation of Amendment. Any instrument amending these covenants, conditions, and restrictions (other than an amendment by the Declarant) shall be delivered, following approval by the Members, to the Board of Directors of the Master Association. Thereupon, the Board of Directors shall, within thirty (30) days after delivery, do the following:

(a) Reasonably assure itself that the amendment has been approved by the Members of the Master Association.

(b) Attach to the amendment a certification as to its validity, which certification shall be executed by the Master Association in the same manner that deeds are executed.

(c) Immediately, and within the thirty (30) day period aforesaid, cause the amendment to be executed by the Association officers and recorded in the Davie County Registry.

All amendments shall be effective from the date of recordation in the Davie County 3 Registry, unless a later effective date is specified therein; provided, however, that no such instrument shall be valid until it has been indexed in the name of the Master Association. When any instrument purporting to amend the covenants, conditions and restrictions has been certified by the Board of Directors, recorded and indexed as provided by this Section, it shall be conclusively presumed that such instrument constitutes a valid amendment as to the Owners of all lots in the Sub-Associations.

Section 4. Enforcement. If any person, firm or corporation shall violate or attempt to violate any of these restrictions, it shall be lawful for the Declarant, the Master Association, any Sub-Association, or other person, firm or corporation owning any Property subject to the terms hereof to bring an action against the violating party at law or in equity for any claim which these restrictions may create in such other Owner or interested party either to prevent said person, firm or corporation from so doing such acts or to recover damages for such violation. Any failure by the Master Association, Sub-Association, Declarant or any Owner to enforce any of said covenants and restrictions or other provisions shall in no event be deemed a waiver of the right to do so thereafter. Invalidation of any one or more of these restrictions by judgment or court order shall neither affect any of the other provisions not expressly held to be void nor the provisions so voided in circumstances or application other than those expressly invalidated, and all such remaining provisions shall remain in full force and effect together with the provisions ruled upon as they apply to circumstances other than those expressly invalidated.

Section 5. Delegation and Assignability. Declarant shall at all times and from time to time have the right to delegate any and all functions herein reserved to Declarant. Further, notwithstanding any other provision contained herein to the contrary, Declarant shall have the right at all times and from time to time to fully transfer, convey and assign all or any part of its right, title and interest (whether real or personal) in and to the General Common Areas to the Master Association. In the event of any such sale, transfer or conveyance, Declarant shall not be liable to any person for any injury or loss resulting from failure of performance or negligent performance of Declarant's obligations under these covenants arising after such sale, transfer or conveyance.

Section 6. FHA/VA Approval. As long as there is a Class B membership, the following actions will require the prior written approval of the Federal Housing Administration or the Department of Veterans' Affairs: annexation of additional properties, dedication of General Common Areas or Limited Common Areas, and amendment of this Declaration of Covenants, Conditions and Restrictions. This paragraph shall apply only in the event Declarant desires FHA or VA approval for any development, phase or portion thereof, in Kinderton Village.

Section 7. Headings and Binding Effect. Headings are inserted only for convenience and are in no way to be construed as defining, limiting, extending or otherwise modifying the particular Sections to which they refer. The covenants, agreements, and rights set forth herein shall be binding upon and inure to the benefit of the respective heirs, executors, successors and assigns of the Declarant and any Owner and all persons or entity claiming by, through or under Declarant or any Owner.

Section 8. Unintentional Violation of Restrictions. In the event of unintentional violation of any of the foregoing restrictions with respect to any Lot, the Declarant or its

successors reserves the right (by and with the mutual written consent of the Owner or Owners for the time being of such Lot) to change, amend, or release any of the foregoing restrictions as the same may apply to that particular Lot.

Section 9. Conflicts. In the event of any irreconcilable conflict between the Declaration and the Bylaws of the Master Association, the provisions of this Declaration shall control. In the event of any irreconcilable conflict between this Declaration or the Bylaws of the Master Association and the Articles of Incorporation of the Master Association, the provisions of the Articles of Incorporation shall control.

Section 10. Professional Management. Declarant reserves the right to select professional management of the Master Association for the period during which Declarant maintains voting control of the Master Association. Declarant is not required to engage professional management, but may, if Declarant so desires. Following the transfer of voting control to the Members pursuant to Article III, the Members may vote either to engage professional management for the Master Association, or to self manage the Master Association. Any contract for professional management shall provide that the Master Association may terminate said contract on the giving of not less than ninety (90) days' notice.

## ARTICLE X

### Dissolution or Insolvency of the Master Association

In the event that the Master Association becomes insolvent or for any reason whatsoever loses the ownership of any of the General Common Areas, the Owners of Lots having an interest in such General Common Areas or any Member of the Master Association may, at their election as determined by majority vote of those affected, form a nonprofit corporation as provided in the Articles and Bylaws of the Master Association and assign to it the duty and authority to assess on a per lot basis all Lots having an interest in such General Common Areas, whereupon such corporation shall maintain such General Common Areas in the same manner that the Association is empowered to do by this instrument with the same right of lien for assessments provided for herein.

IN WITNESS WHEREOF, the Declarant has caused this Declaration of Covenants, Conditions and Restrictions to be duly signed this 19th day of December, 2000.

[SEE NEXT PAGE FOR SIGNATURES]

ADAMS EGLOFF AVANT PROPERTIES,  
L.L.C., a N. C. limited liability company (SEAL)

By: Kerry L. Avant (SEAL)  
Kerry L. Avant, Member

By: Richard C. Egloff (SEAL)  
Richard C. Egloff, Member

By: Trent C. Adams (SEAL)  
Trent C. Adams, Member

CONSENT OF OTHER LOT OWNERS

K. T. Isenhour Construction Co., Inc. joins in the execution of this Declaration for the purposes of giving its consent to the terms and provisions of the Declaration and to subject the lots owned by it which are a part of the single family lots of Kinderton Village described herein to all of the terms and conditions of the foregoing Declaration.

K.T. ISENHOUR CONSTRUCTION CO., INC.

By: [Signature]  
\_\_\_\_\_, President

STATE OF NORTH CAROLINA )  
 )  
COUNTY OF FORSYTH )

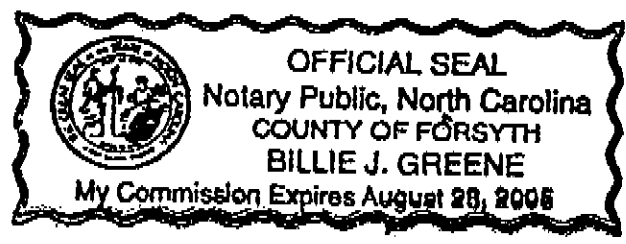
I, Billie J. Greene, a Notary Public of Forsyth County, State of North Carolina, do hereby certify that Kerry L. Avant, Richard C. Egloff, and Trent C. Adams, Members of ADAMS EGLOFF AVANT PROPERTIES, L.L.C., a N.C. limited liability company personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

WITNESS my hand and notarial seal, the 19<sup>th</sup> day of December, 2000.

Billie J. Greene  
Notary Public

My commission expires:

August 28, 2005



STATE OF NORTH CAROLINA )  
 )  
COUNTY OF FORSYTH )

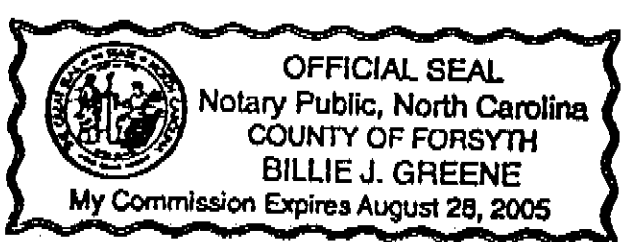
I, Billie J. Greene, Notary Public of Forsyth County, State of North Carolina, certify that K. T. ISENHOUR personally came before me this day and acknowledged that he/she is President (Title) of K. T. ISENHOUR CONSTRUCTION CO., INC., a North Carolina corporation, and that he/she, as the President of said corporation, being duly authorized to do so, executed the foregoing instrument on behalf of the corporation.

Witness my hand and official seal, this the 19<sup>th</sup> day of December, 2000.

Billie J. Greene  
Notary Public

My Commission Expires:

August 28, 2005



NORTH CAROLINA, DAVIE COUNTY 36  
The foregoing certificates of Billie J. Greene, Notary Public of Forsyth County, NC, are certified to be correct. This the 19 day of December, 2000.  
M. BRENT SHOAF, REGISTER OF DEEDS by Caryl J. Forest Deputy