

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

In compliance with the requirements of Chapter 55A of the North Carolina General Statutes, the undersigned, who is a resident of Mecklenburg County, North Carolina and is of the age of eighteen (18) years or more, does hereby make and acknowledge these Articles of Incorporation for the purpose of forming a corporation not for profit and does hereby certify:

**ARTICLE I  
NAME**

The name of the corporation is The Condominiums At Kinderton Village Owners Association, Inc. (hereinafter referred to as the "Association").

**ARTICLE II  
DURATION**

The corporation shall have perpetual duration.

**ARTICLE III  
PURPOSES**

The purposes for which the corporation is organized are:

(a) To provide for the management, maintenance, preservation, administration and operation of The Condominiums At Kinderton, a condominium organized pursuant to Chapter 47C of the North Carolina Statutes, the North Carolina Condominium Act, as set forth in that certain Declaration of Condominium to be recorded in the Office of the Register of Deeds for Davie County, North Carolina (the "Declaration");

(b) To promote the health, safety and welfare of the "Unit Owners" (as defined in the Declaration) and residents within the jurisdiction of the corporation; and

(c) To engage in any and all lawful activities incidental to the foregoing purposes, except as restricted herein.

**ARTICLE IV  
NON-PROFIT QUALIFICATIONS**

This corporation does not contemplate pecuniary gain or profit to the members thereof, and it is organized for non-profit purposes. It is intended that this corporation qualify as an exempt organization under the provisions of Chapter 55A of the North Carolina General Statutes and as a homeowners association under the provision of Section 528 of the Internal Revenue Code. No part of the net earnings of the corporation shall inure to the benefit of any member or individual

**ARTICLE V  
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 therefore, 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 in Article III above, all in accordance with any further provisions of the bylaws of the corporation.

**ARTICLE VI  
MEMBERSHIP AND VOTING RIGHTS**

The corporation shall have members. Such membership shall be limited to the owners of condominium units in The Condominiums at Kinderton Village, and every owner of a unit shall automatically be a member of the corporation. Membership in the Association is appurtenant to, and inseparable from, ownership of a condominium unit in The Condominiums at Kinderton Village. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation.

**ARTICLE VII  
REGISTERED AGENT AND OFFICE**

The address of the principal and initial registered office in the State of North Carolina is:

Horack Talley Pharr & Lowndes, P.A.  
301 South College Street, Suite 2600  
Charlotte, North Carolina 28202-6038  
Mecklenburg County

and the name of the initial registered agent at such address is Cheryl D. Steele.

## **ARTICLE VIII EXECUTIVE BOARD**

The affairs of the corporation shall be managed by an Executive Board of three (3) directors who need not be members of the Association. The number of directors may be changed by amendment of the Bylaws of the Association. The names and addresses of the persons who will serve as members of the Board until the selection of successors are:

<u>Name</u>	<u>Address</u>
Gail Goss	2401 Whitehall Park Drive, Suite 700 Charlotte, North Carolina 28273-3353
Laney Horton	2401 Whitehall Park Drive, Suite 700 Charlotte, North Carolina 28273-3353
Jim Ludwig	2401 Whitehall Park Drive, Suite 700 Charlotte, North Carolina 28273-3353

The method of election and term of office, removal and filling of vacancies shall be as set forth in the Bylaws. The Board may delegate such operating authority to such companies, individuals, or committees as it, in its discretion, may determine.

## **ARTICLE IX INDEMNIFICATION**

To the fullest extent permitted by the North Carolina Nonprofit Corporation Act as it exists or may hereafter be amended, no person who is serving or who has served as a director of the corporation shall be personally liable to the corporation or any of its members for monetary damages for breach of any duty as a director. No amendment or repeal of this article, nor the adoption of any provisions to these Articles of Incorporation inconsistent with this article, shall eliminate or reduce the protection granted herein with respect to any matter that occurred prior to such amendment, repeal or adoption.

## **ARTICLE X AMENDMENTS**

These Articles of Incorporation may be amended as provided by the provisions of Chapter 55A of the North Carolina General Statutes, provided that no amendment shall

conflict with the Declaration or the North Carolina Condominium Act, Chapter 47C of the North Carolina General Statutes.

**ARTICLE XI  
INCORPORATOR**

The name and address of the incorporator is as follows:

Cheryl D. Steele  
Horack Talley Pharr & Lowndes, P.A.  
301 South College Street, Suite 2600  
Charlotte, North Carolina 28202-6038

IN WITNESS WHEREOF, for the purposes of forming this corporation under the laws of the State of North Carolina, I, the undersigned, being the incorporator of this Association, have executed these Articles of Incorporation this 26<sup>th</sup> day of July, 2002.

  
\_\_\_\_\_(SEAL)  
Cheryl D. Steele, Incorporator

**EVERY PROSPECTIVE PURCHASER SHOULD READ THIS PUBLIC OFFERING STATEMENT CAREFULLY BEFORE SIGNING AN AGREEMENT OF PURCHASE AND SALE**

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**PUBLIC OFFERING STATEMENT  
FOR  
THE CONDOMINIUMS AT KINDERTON VILLAGE**

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**NAME OF CONDOMINIUM:** The Condominiums at Kinderton Village

**PRINCIPAL ADDRESS OF  
CONDOMINIUM:**

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**NAME OF DECLARANT:**

Mulvaney Homes, Inc.

**PRINCIPAL ADDRESS OF  
DECLARANT:**

2401 Whitehall Park Drive, Ste. 700  
Charlotte, North Carolina 28273

**EFFECTIVE DATE OF PUBLIC  
OFFERING STATEMENT:**

July \_\_\_\_\_, 2002

**IMPORTANT NOTICE**

(The following statements are made in compliance with the requirements of Sections 47C-4-103 and 47C-4-104 of the North Carolina Condominium Act (the "Act")).

ANY PURCHASER MUST RECEIVE A COPY OF THIS PUBLIC OFFERING STATEMENT TOGETHER WITH ALL AMENDMENTS THERETO PRIOR TO EXECUTION OF A CONTRACT TO PURCHASE A UNIT IN THE CONDOMINIUMS AT KINDERTON VILLAGE (THE "CONDOMINIUM") FROM THE DECLARANT AND SUCH PURCHASER SHALL HAVE A PERIOD OF SEVEN (7) DAYS THEREAFTER IN WHICH PURCHASER SHALL HAVE THE ABSOLUTE RIGHT TO RESCIND THE CONTRACT THERETOFORE EXECUTED. NO CONVEYANCE OF

A UNIT CAN OCCUR UNTIL SEVEN (7) DAYS AFTER EXECUTION OF THE CONTRACT AND DELIVERY OF THIS PUBLIC OFFERING STATEMENT. IF THE PURCHASER ELECTS TO CANCEL THE CONTRACT FOR THE PURCHASE OF A UNIT PURSUANT TO THE IMMEDIATELY PRECEDING SENTENCE, HE OR SHE MAY DO SO BY HAND DELIVERING NOTICE OF CANCELLATION TO THE DECLARANT (IN WHICH CASE A RECEIPT SHOULD BE OBTAINED) OR BY MAILING THE NOTICE THEREOF BY POSTAGE PREPAID UNITED STATES MAIL. THIS CANCELLATION OF THE PURCHASE CONTRACT IS WITHOUT PENALTY AND ALL PAYMENTS MADE BY THE PURCHASER BEFORE THIS CANCELLATION WILL BE PROMPTLY REFUNDED BY THE DECLARANT.

## NARRATIVE

### CONTENTS OF THIS PUBLIC OFFERING STATEMENT

This Public Offering Statement consists of six (6) separate parts which together constitute the complete Public Offering Statement. This first part, entitled "Narrative", summarizes the significant features of the Condominium and presents additional information of interest to prospective purchasers. The other five (5) parts contain respectively: the form Purchase Agreement for the individual Units (the "Purchase Agreement"), the current versions of the proposed Declaration for the Condominium, the Bylaws for the Condominium, (attached as Exhibit E to the Declaration) and the Articles of Incorporation for the Condominium Association, and the projected Budget for the first year of operation of the Condominium.

This Narrative is intended to provide only an introduction to the Condominium and not a complete or detailed discussion. Consequently, the other parts of this Public Offering Statement should be reviewed in depth, and if there should be any inconsistency between information in this part of the Public Offering Statement and information in the other parts, the other parts will govern. All of Declarant's salespersons and other representatives are prohibited from orally changing any of the terms and conditions of the aforementioned documents or, with the exception of the Declarant's attorneys, attempting to interpret their legal effect.

All capitalized terms used in this Public Offering Statement and not expressly defined herein will have the same meanings as are ascribed to those terms in the Act or the Declaration and Bylaws of the Condominium, or both.

## THE CONDOMINIUM CONCEPT

The term "Condominium" refers to a form of property ownership which, in effect, combines two older forms of ownership. A residential condominium Unit Owner is, at the same time, both the sole owner of the portion of a building which encloses his or her living quarters (the "Unit") and one of many mutual owners (in legal terms, "tenants in common") of common facilities which service his or her living quarters, as well as common areas which a Unit Owner may use and enjoy along with Owners of other Units.

The "Common Elements" are all portions of the property which are not included within the Units. In the case of the Condominium, the Common Elements include (but are not limited to) all exterior walls, roofs and structural elements of the buildings, all common utility systems and the land and improvements surrounding the buildings (including parking areas). "Limited Common Elements" are Common Elements for the exclusive use of one or more (but fewer than all) of the Units, e.g., a deck, concrete patio, exterior storage area and assigned parking space.

Each individual Unit Owner owns with his Unit a specified undivided interest in the Common Elements (the "Percentage Interest") usually expressed in the form of a percentage or decimal. This means that all Unit Owners share in the ownership of all Common Elements. The ownership of this Percentage Interest gives each Unit Owner the right, subject to the terms of the Act, the Declaration and the Bylaws, to use and participate in the control of the Common Elements (through membership in the Homeowners Association) in common with other Unit Owners, and also imposes upon each Unit Owner the obligation to pay a percentage of the expenses of operating and maintaining the Common Elements equal to his Percentage Interest multiplied by the aggregate amount of these Common Expenses. The amounts comprising the Common Expenses are determined in annual budgets established by the Executive Board of The Condominiums at Kinderton Village Owners Association, Inc. (the "Association"). It is this coupling of the exclusive ownership of a Unit with the shared ownership of the Common Elements which distinguishes condominium ownership from other forms of property ownership.

## THE DECLARANT

The Declarant is Mulvaney Homes, Inc., a corporation organized, existing and established under the laws of the State of North Carolina.

## GENERAL DESCRIPTION OF THE CONDOMINIUM

The Condominium will be located in Davie County, North Carolina. The Declarant presently plans for the Condominium to include two hundred twenty-eight (228) residential condominium units in thirty-seven (37) buildings located on a total of \_\_\_\_\_ acres of land in Davie County, North Carolina. If Declarant constructs the full complement of units as planned, the Condominium will be constructed in \_\_\_\_\_ (\_\_\_\_\_) phases. Phase 1 will consist of \_\_\_\_\_ (\_\_\_\_\_) buildings containing a total of \_\_\_\_\_ (\_\_\_\_\_) units, Phase 2 will consist of \_\_\_\_\_ (\_\_\_\_\_) buildings containing a total of \_\_\_\_\_ (\_\_\_\_\_) units and Phase 3 will consist of \_\_\_\_\_ (\_\_\_\_\_) buildings containing a total of \_\_\_\_\_ (\_\_\_\_\_) units. Units will be constructed into either \_\_\_\_\_ (\_\_\_\_\_) story buildings containing either twelve (12) or eighteen (18) units or two (2) story quadriplexes containing four (4) units. Reference is made to the schematic architectural drawings of Declarant for details of the unit floorplans and the building exteriors.

All Units in the Condominium are restricted to residential use only. The Declarant reserves the right to rent or market to investors the Units in the Condominium. The Declarant further reserves the right to change the price of any unsold Unit at any time and to use a maximum of three (3) unsold Units as models or as a sales, model or management office and to withdraw any withdrawable real estate from the Condominium.

## SUMMARY OF PRINCIPAL CONDOMINIUM DOCUMENTS

A number of documents will create and govern the operation of the Condominium. These documents (collectively referred to as the "Condominium Documents") include the Declaration, the Bylaws, and the Rules and Regulations. The following is a summary of the principal relevant Condominium Documents:

### DECLARATION

The Condominium is created by the Declarant's recording of the Declaration.

Article I of the Declaration provides definitions of certain terms used in the Condominium Documents.

Article II of the Declaration submits the Condominium to the provisions of the Act and describes the Percentage Interests, votes and Common Expense liabilities allocated to each Unit. The Percentage Interest applicable to each Unit was calculated by dividing the

approximate square footage area of each Unit by the total square footage area of all Units. Each Unit shall be entitled to one vote in the Association to be cast by its Owner(s) and the Common Expense liability of each Unit shall be assessed in accordance with its respective Percentage Interest.

Article II of the Declaration also describes the boundaries of the Units, the Limited Common Elements and the Common Elements in the Condominium. Unit boundaries run along the undecorated surfaces of the ceiling facing the interior of the Unit and the topmost surfaces of the subflooring, the undecorated surfaces of the perimeter walls, exterior doors and exterior windows facing the interior of the Unit and include the decoration on all such interior and topmost surfaces, including, without limitation, all paneling, tiles, wall paper, paint, finish flooring and any other materials constituting any part of the decorated surfaces thereof, and also include all spaces, interior partitions and other fixtures and improvements within such boundaries. The significance of the Unit boundaries is that all portions of the Unit contained within these boundaries are owned by the Unit Owner and the Unit Owner has sole responsibility for the care, maintenance and replacement of these areas. The provisions of Article II deal with the subdivision or alteration of existing Units by Unit Owners. Article II also describes certain portions of the Buildings which are designated as Limited Common Elements in the Declaration and Plans.

Article III describes how additional phases may be added to the Condominium and reserves to the Declarant the right to maintain models, signs and sales offices on the Condominium Property as well as other rights.

Articles IV and V of the Declaration list various easements to which the Condominium or certain portions of the Condominium are subject. (See the portion of this Narrative entitled "Encumbrances upon Title").

Article V of the Declaration also imposes various restrictions on the use of the Units and various other portions of the Condominium.

Article VI of the Declaration deals with the liability of Unit Owners to pay for all assessments allocated to their individual Units and provides for the procedures to be followed to fix and collect assessments in the event that a Unit Owner fails to pay them.

Article VII of the Declaration deals with the responsibility of both Unit Owners and the Association regarding maintenance, repairs, alterations and improvements to the Units and Common Elements.

Article VIII of the Declaration outlines the types and amount of insurance which the Association is required to obtain and the various provisions governing such insurance.

Articles VIII and IX of the Declaration deal with procedures to be followed by the Declarant, the Unit Owners and the Association in the event of casualty damage to the Units or Common Elements or a taking by eminent domain of any part of the Units or the Common Elements.

Article X of the Declaration describes the procedures that must be complied with in order to terminate the Condominium.

Article XI of the Declaration deals with the rights of lenders who provide mortgage financing to purchasers of Units in the Condominium.

Article XII of the Declaration deals with the creation of the Association.

Article XIII of the Declaration sets forth general conditions regarding the interpretation, validity and enforceability of the Condominium Documents.

## **BYLAWS**

The Bylaws are the rules for governance of the Association and serve the same purpose as the Bylaws of a corporation.

Article II of the Bylaws establishes the membership rights of all Unit Owners in the Association and sets forth the time, location, purpose and business to be conducted at meetings of the Association. Article II also sets forth the required notice, quorum and voting rights of the Unit Owners as members of the Association and the procedures to be followed in conducting meetings of the Association. The Bylaws require the Association to conduct meetings at least annually. At such meetings various members of the Executive Board will be elected and the members present will conduct such other business as may be required by law or by the Condominium Documents.

Article III of the Bylaws sets forth the procedures for electing the Executive Board of the Association and discusses procedures in the event of resignation or removal of an Executive Board member and the filling of vacancies in the Executive Board. Article III also sets forth the powers of the Executive Board and the limitations on these powers.

Article IV of the Bylaws sets forth the procedures governing meetings of the Executive Board, including the required notice, quorum and voting rights of the directors of the Executive Board and the procedures to be followed in conducting the meetings of the Executive Board. Article IV also sets forth limitations on the liability of directors and officers and provides for the indemnification of directors and officers against all expenses and liabilities which they may incur, absent their willful misconduct or bad faith.

Article V of the Bylaws contains provisions governing the election of officers of the Association by the Executive Board and the duties of such officers. The Executive Board annually elects a chairman of the Board, Secretary, Treasurer and such other officers as the Executive Board may determine.

Article VI deals with the liability of Unit Owners to pay for all assessments allocated to their individual Units and provides for the procedures to be followed to fix and collect assessments in the event that the Unit Owner fails to pay them. Article VI also sets forth the obligations of each Unit Owner regarding the maintenance and repair of his Unit and the obligation of the Association to maintain and repair the Common Elements. Article VI also describes procedures to be followed regarding the addition, alteration or improvement of the Units and the Common Elements by the Unit Owners and the Association.

Article VII of the Bylaws discusses the record keeping requirements of the Association and the annual budget established by the Association, including the factors to be taken into account in constructing the budget.

Article VIII of the Bylaws sets forth the procedures for amendment of the Bylaws.

Article IX of the Bylaws discusses the effect of a taking of any part of the Condominium by eminent domain, including the disbursement of any condemnation awards.

Article X of the Bylaws discusses Architectural Control of the Units.

Article XI of the Bylaws discusses the tax liability of Unit Owners and the Association for the Units and the Common Elements.

## **RULES AND REGULATIONS**

Under the Declaration, the Executive Board may promulgate Rules and Regulations governing the use of the Condominium. Included in the Rules and Regulations may be restrictions concerning: (i) the types of vehicles which may be parked at the Condominium; (ii) solicitations and trash removal; (iii) the use of Common Elements; and (iv) the use of the Units, including noise, odors and external appearances.

## **PURCHASE AGREEMENT**

A copy of the agreement of purchase and sale to be executed by all Unit Purchasers is contained in a part of this Public Offering Statement "Purchase Agreement". The Purchase Agreement describes the various rights, duties and obligations of the Purchaser and Declarant relating to the Unit to be purchased, including closing costs to be paid by the Purchaser.

## **SUMMARY OF PRINCIPAL CONDOMINIUM CONTRACTS**

The following is a summary of the principal relevant contracts affecting the operation of the Condominium:

During the first year of the Condominium pest control services will be provided on a periodic basis by a North Carolina licensed pest control contractor. At the option of the Association such services may be renewed annually.

## **CONDOMINIUM ASSOCIATION FINANCIAL MATTERS**

Unit Owners will be assessed on a monthly basis in order to provide the Association with the funds necessary to meet the annual budget of the Association. The amount of the Common Expenses assessed against each Unit will be based upon its applicable Percentage Interest. All Common Expenses associated with the maintenance, repair or replacement of a Limited Common Element shall be assessed as expenses against the Unit to which such Limited Common Element was assigned at the time the expense was incurred. No Unit Owner may exempt himself from liability with respect to Common Expenses by refraining from using his Unit or any of the Common Elements.

The budget will cover anticipated Common Expenses for the upcoming fiscal year. The budget will also include a reserve for periodic maintenance, repair and replacement of Common Elements. Included in the portion of this Public Offering Statement entitled

"Preliminary Association Budget" is the projected budget for the Association for the first year of the Condominium's operation after the anticipated date of the first conveyance of a Unit to a purchaser. The budget figures are, of course, estimates and the Declarant cannot be certain the sufficient funds have been budgeted to cover all Common Expenses that may be incurred. The budget estimates are not intended or are not considered as guaranties of any kind whatsoever, and the actual expenditures may differ from estimated expenditures, due to possible changes in the future income or expenses of the Condominium, changes in the general condition of the economy or other variable factors. Declarant, however, believes that the current version of the budget is based upon the best possible cost estimates that can be made at this time on the basis of the information currently available. The assumptions made and methods used in preparing the estimates are set forth in the notes to the budget.

If insufficient funds are budgeted for any given fiscal year, the Executive Board may levy an additional or special assessment to make up the budget deficit.

In addition to the reserves included in the budget, the Association will have a separate working capital fund to insure that the Association will have cash available to meet unforeseen expenditures during the initial months of the Condominium's operation. At closing, each purchaser of a Unit shall make a non-refundable contribution to the working capital fund of an amount equal to two (2) months' estimated common expense liability. Such contributions are not to be considered as advance payments of the normal monthly assessments.

There are no services which are not reflected in the budget that the Declarant currently provides, or expenses that it pays and that it expects may become a Common Expense at any subsequent time.

Each Unit Owner is personally liable for the payment of all sums assessed by the Association against his Unit during his ownership of such Unit, and such assessments constitute a lien against his Unit until fully paid. If the assessments are not paid when due the Association has the right to obtain payment of past due assessments by foreclosure of the lien (resulting in a forced sale of the Unit) or by suing the Unit Owner. In addition, the Association may assess a late charge and interest and provide notice of the delinquency to a lender holding a mortgage on the Unit. The delinquent Owner shall also be obligated to pay all expenses of the Association, including reasonable attorneys' fees, incurred in collection of the delinquent assessment. Any unpaid assessments which cannot be properly collected from a former Unit Owner after he transfers his Unit may be reassessed by the Association as a Common Expense to be collected from all of the Unit Owners.

## ENCUMBRANCES UPON TITLE

The Condominium is subject to:

(A) the Declaration to be recorded, including conditions disclosed by the Plans, to be recorded, the Bylaws and the Rules and Regulations, as each of them may be amended from time to time.

(B) Unrecorded easements, discrepancies or conflicts in boundary lines, shortages in area and encroachments which an accurate and complete survey would disclose, including any easements and encroachments as shown on the Plat and Plans.

(C) Easements and restrictions described in Articles IV and V of the Declaration including:

(i) easements in favor of the appropriate utility companies to serve the Condominium Property and all appurtenances thereto and easements reserved by the Declarant for public storm water drainage facilities;

(ii) easements in favor of the Association and to such persons as authorized by the Association for utility installations within the walls of the Units;

(iii) an easement in favor of the Association, a Unit Owner, the Executive Board or any other person as permitted under the Condominium Documents to inspect, maintain, repair and replace the Common Elements;

(iv) easements in favor of the Declarant, the Association, appropriate utility and service companies and governmental agencies and authorities for such utility, sewage disposal, and service lines and equipment as may be necessary or desirable over the Units and the Common Elements to serve any portion of the Condominium Property;

(v) easements reserved by the Declarant through the Common Elements as reasonably necessary for discharging its obligations under the Condominium Documents and completion of construction of the Condominium;

(vi) easements reserved by the Declarant to maintain sales offices or models in the Condominium and to place advertising signs for the Condominium on the Condominium Property;

(D) A first mortgage to be granted by Declarant to a bank or savings and loan association and thereafter recorded; and financing statements to be executed between Declarant and said lender further securing the sums secured by the aforementioned mortgage. The liens and encumbrances referred to in the preceding sentence will be released on a Unit by Unit basis as each Unit is conveyed.

(E) Ad valorem property taxes not yet due and payable.

### **FINANCING FOR PURCHASES OF UNITS**

Although the Declarant has not obtained any commitment for mortgage loans to be made available to Unit purchasers, the Declarant will be happy to refer prospective purchasers to one or more institutions which may be prepared to provide this financing under normal FHA or conventional loan underwriting standards.

A purchaser shall not place a mortgage on his Unit until he has advised the Executive Board of the name and address of the lender and the amount of the loan.

### **WARRANTIES PROVIDED BY THE DECLARANT**

The only warranties provided by the Declarant are those expressly set forth in the Purchase Agreement. In summary, the Declarant warrants:

(a) upon written notice from a Unit Owner within thirty (30) days from date of closing of the Unit, Declarant will make any necessary repairs to functional components of the Unit such as doors (including hardware), windows, electric switches, receptacles and fixtures, plumbing and plumbing fixtures, cabinets, bathroom tile or exterior opening caulking; and

(b) upon written notice from a Unit Owner within one (1) year from date of closing, Declarant will repair or correct any defects in materials or workmanship in the original construction of the structural components of the Unit.

No claim arising out of the warranties set forth in the Purchase Agreement may be brought unless, prior to the expiration of the appropriate warranty period, the purchaser has delivered notice to the Declarant of the alleged breach of such warranty.

The above warranties shall not apply if the defective part or parts of the Unit have been subjected to misuse or damage by accident or have not been afforded reasonable care.

The liability of Declarant is limited to replacing or repairing any defective parts or materials which do not comply with these warranties and in no event shall such liability exceed the replacement cost of the Unit. Declarant shall not be liable for consequential damages arising from any breach of such warranties.

Declarant will make available to each Unit Purchaser any warranty on any item of equipment or appliance that has been purchased new from the Declarant if such warranty has been provided to the Declarant by the manufacturer thereof.

EXCEPT AS SET FORTH ABOVE, THE UNIT AND ALL PERSONAL PROPERTY ARE BEING SOLD "AS IS", WITHOUT WARRANTY OR REPRESENTATION OF ANY KIND, EXPRESSED OR IMPLIED, INCLUDING BY WAY OF ILLUSTRATION AND NOT LIMITATION, IMPLIED WARRANTIES OF MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE OR HABITABILITY. ALL DISPUTES, CLAIMS OR CONTROVERSIES BETWEEN DECLARANT AND A UNIT PURCHASER CONCERNING THE CONSTRUCTION OF THE UNIT AND ANY COMMON ELEMENT AND/OR ANY UNIT PURCHASER'S WARRANTY RIGHTS UNDER THE PURCHASE CONTRACT SHALL BE RESOLVED SOLELY THROUGH ARBITRATION IN ACCORDANCE WITH THE CONSTRUCTION INDUSTRY ARBITRATION RULES OF THE AMERICAN ARBITRATION ASSOCIATION AND THE UNIT PURCHASER AND DECLARANT EXPRESSLY WAIVES ALL RIGHTS TO EXERCISE OTHER REMEDIES WHICH MIGHT OTHERWISE BE AVAILABLE.

#### **LITIGATION INVOLVING THE ASSOCIATION, THE DECLARANT OR THE CONDOMINIUM**

As of the effective date of this Public Offering Statement there are no known or recorded unsatisfied judgments against the Association or the Declarant and such entities are not a party to any known pending litigation. The Declarant has no actual knowledge of any currently pending litigation that would have any effect on the Condominium.

#### **ESCROW DEPOSITS UNDER PURCHASE AGREEMENTS**

Any deposit made in connection with the purchase of a Unit, if deposited by Declarant during the seven (7) day rescission period described on the first page of this Public Offering Statement, will be held in an escrow account in accordance with the provisions of Section 47C-4-110 of the Act.

## RESTRICTIONS ON TRANSFERABILITY OR USE OF UNITS

There are no restrictions upon the resale of a Unit by its Owner and no right of first refusal with respect thereto. The Declaration does provide (in Section 5.3) however, for the following restrictions upon the leasing of Units: (i) no Unit may be offered for rent or lease without the express written approval of the Association and the Declarant for so long as the Declarant owns any Unit. Unit Owners desiring to lease their Unit 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 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 and/or the Declarant in their absolute discretion. The foregoing notwithstanding, all Leases shall be denied in the event that it will contribute to any of the following: (a) causing the total number of rental Units within the Condominium to exceed 20% of the total number of Units within the Condominium; or (B) causing the total number of rental properties (or rental units) to exceed any limitation established by HUD/VA/FNMA/FHLMC.

In addition to the restrictions on the use of the Units discussed earlier in this Narrative (under the heading "General Description of the Condominium") the Declaration (in Article V) imposes, among others, the following restrictions on use:

- (a) The Units in the Condominium are restricted to residential use only;
- (b) The Common Elements may be used only for the benefit or enjoyment of the Unit Owners and Occupants of all Units. No Unit Owner may carry on any practice, or permit any practice to be carried on, which unreasonably interferes with the quiet enjoyment by the Occupants of any other Unit.
- (c) No Unit may be used in a manner which increases any rate of insurance maintained with respect to the Condominium without the prior written consent of the Executive Board, nor may any Unit be used in a manner which violates any law or will result in the commitment of waste to the Unit or the Common Elements;
- (d) No Unit Owner other than the Declarant may erect any sign on or in his Unit or any Limited Common Element which is visible from outside his Unit or from the Common Elements without prior written permission of the Executive Board;

(e) No Unit Owner or Occupant with the exception of Declarant 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 Executive Board.

(f) No animal shall be kept in or on the Property except for generally accepted household pets.

(g) Unit Owners are responsible for maintaining their individual Units in good order and repair at the expense of such owners. The responsibilities of the Unit Owner for cleaning, maintenance and repair include the cleanliness of any Limited Common Element serving his Unit only.

Reference is made to Article V of the Declaration for a detailed description of the restrictions, conditions and covenants applicable to the Condominium.

### CONDOMINIUM INSURANCE

The Condominium, exclusive of the Units themselves, will be insured by a policy of fire and property damage insurance written on an "All-Risk" basis in an amount equal to not less than one hundred percent (100%) full insurable value of the Property on a replacement cost basis exclusive of land, excavations, foundations and other items normally excluded from property policies.

The premium for this insurance will be paid by the Association and each Unit Owner will pay his share as part of his assessment for Common Expenses. This policy will not insure physical improvements within the boundaries of each Unit, nor the appliances or personal property of the Unit Owner, it being the individual responsibility of Unit Owners to obtain property insurance and liability insurance with respect to claims arising out of the use and ownership of their individual Units. As of the date of this Public Offering Statement such insurance coverage is currently available in North Carolina and should be obtained by each Unit Owner to protect himself against fire or other damage to his Unit and liability claims within his Unit.

The Association will also carry a liability insurance policy on behalf of the Association and all Unit Owners to insure them against liability arising out of the ownership or use of the Common Elements in compliance with the applicable requirements of the Declaration. This liability policy will not insure Unit Owners against liability

arising from an accident or an injury occurring within their Unit or from their own negligence.

The Association may obtain fidelity insurance coverage in commercial blanket form covering each director and officer of the Association, any employee or agent of the Association and any other person handling or responsible for handling funds of the Association. Such bonds shall contain appropriate endorsements to cover persons who serve without compensation and the premiums for such bonds shall be a Common Expense.

The Executive Board may engage, and pay as a Common Expense, any appropriate person to act as an insurance trustee to receive and disburse insurance proceeds consistent with the provisions of the Act and the Declaration.

#### **EXPECTED FEES OR CHARGES PAID BY UNIT OWNERS FOR THE USE OF THE COMMON ELEMENTS**

It is not now contemplated that any charges will be made for use of any part of the Common Elements. The operation or the maintenance of the Common Elements will be covered fully in the Association budget and included in the maintenance fees. The Declarant does not know of any unusual or material circumstances, features or characteristics of the Condominium or the Units other than has been disclosed in this narrative.

#### **EXISTING ZONING AND OTHER LAND USE REQUIREMENTS GOVERNING THE CONDOMINIUM**

The present zoning classification of the Property under the Davie County Zoning Ordinance permits the construction of a condominium project of the size and type as the Condominium. The development of the Property is also subject to development restrictions contained in the Davie County Subdivision Ordinance.

#### **AMENDMENTS**

This Public Offering Statement is subject to change in order to reflect any material changes in the information set forth herein or otherwise required by the Act. The Declarant shall provide a copy of any such material change in the information required in this Public Offering Statement to any purchaser who has executed a Purchase Agreement. If any material change is made in the Declaration after a Purchase Agreement for a Unit has been signed but before conveyance, the purchaser under said Purchase Agreement may

rescind the Purchase Agreement within seven (7) days after receipt of the notice of the change.

ANY INFORMATION OR DATA REGARDING THE CONDOMINIUM NOT INCLUDED IN THIS PUBLIC OFFERING STATEMENT MUST NOT BE RELIED UPON. NO PERSON HAS BEEN AUTHORIZED BY THE DECLARANT TO MAKE ANY REPRESENTATION OR WARRANTY NOT EXPRESSLY CONTAINED HEREIN AND NOTHING IN THIS PUBLIC OFFERING STATEMENT MAY BE CHANGED OR MODIFIED ORALLY.