

Book Page
1093 0806

FILED
GRANVILLE COUNTY
06/27/2005 10:14 AM
KATHRYN CREWS AVERETT
Register Of Deeds

Prepared By & Mail To: Burns, Day & Presnell, P.A. (JND), P.O. Box 10867, Raleigh, NC 27603

**NORTH CAROLINA
GRANVILLE COUNTY**

**DECLARATION OF COVENANTS AND RESTRICTIONS
FOR DAVENPORT SUBDIVISION**

THIS DECLARATION, made on JUNE 13, 2005 by DAVENPORT-
GRANVILLE PROPERTIES, LLC, a North Carolina limited liability company, (the "Developer").

RECITALS

Developer owns all of the Property which is more particularly described below. Developer will convey the Property subject to the protective covenants, charges, conditions and restrictions described in this instrument to: (i) insure the best use and most appropriate development and improvement of the Property; (ii) protect owners against such improper use of surrounding lots as will depreciate the value of their lot; (iii) preserve, so far as practicable, the natural beauty of the Property; (iv) guard against the erection of poorly designed or proportioned structures and structures built of improper and unsuitable materials; (v) obtain harmonious color schemes; (vi) encourage and secure the erection of attractive structures with appropriate locations, proper set backs from streets, and adequate free spaces between structures; and (vii) provide for a high type and quality of improvements in the Property and thereby to enhance the values of investments made by the owners. **THEREFORE**, Developer declares that all of the Property, together with such additions as may subsequently be added, shall be held, sold, transferred, conveyed, occupied and used subject to this Declaration which shall run with the land and be binding on all parties having any right, title, or interest in the Property or any part thereof, their heirs, successors, and assigns and shall inure to the benefit of each owner.

I. DEFINITIONS. Unless the context clearly indicates otherwise, the following capitalized words and phrases shall have the indicated meanings when used in this instrument:

"**Act**" means the North Carolina Planned Community Act (Chapter 47F of the North Carolina General Statutes), as amended from time to time, or any corresponding provisions of succeeding law.

"**Additional Properties**" means any additional tract or tracts of land which are contiguous to the Property and are subjected to the Declaration pursuant to the terms of this document. For purposes of this Declaration, land which is separated from the Property by a right-of-way or natural boundary (e.g., streams or pond) shall nevertheless be deemed "contiguous".

"**Allocated Interests**" means the undivided interests in the Common Elements and votes in the Association allocated to each Lot as determined in accordance with this Declaration. The Allocated Interests shall be expressed as a numerical percentage and, except for minor variations due to rounding, the aggregate percentages for all of the Lots at any one time shall equal 100%.

"Amenities" means the recreational facilities, if any, constructed on the Common Elements for the common use of the Members.

"Annual Assessments" means the assessments described in *Section 7.4*.

"Approved Budget" means the budget approved by the Association's Board pursuant to *Section 7.4.2*.

"Articles" means the Association's Articles of Incorporation.

"Assessment" means an owner's share of the Common Expenses or other charges from time to time assessed against an Owner by the Association pursuant to the terms of this Declaration; including, but not limited to the Annual Assessments, the Special Assessments, and other assessments authorized by *Section 7.1.1*.

"Association" means Davenport Homeowners Association, Inc., a non-profit North Carolina corporation.

"Association Board" or "Executive Board" refers to the Board of Directors for the Association.

"Builder" means a Person who has purchased the Lot from Developer for purposes of constructing a home on the Lot for sale or lease (i.e., a builder), other than a Person expressly succeeding to Developer's rights as the Developer.

"Bylaws" means the Association's Bylaws.

"Common Area" or "Common Elements" means all real property within the Planned Community owned by the Association (other than a Lot), all Improvements constructed on that real property (including, but not limited to, the Amenities, and the easements granted to the Association for the common use and enjoyment of the Owners. The Common Area/Common Elements to be owned by the Association shall be described in deeds to the Association and designated as such on each Plat. Common Area/Common Elements are more specifically described in *Section 3.1*.

"Common Expenses" means expenses of administration, maintenance, repair or replacement of the Common Elements; expenses described elsewhere in this Declaration or the Bylaws as "Common Expenses"; expenses agreed by the Members to be "Common Expenses"; Association operational costs and management fees; expenses for maintenance of the private streets, if any, within the Planned Community; premiums for insurance as the Declaration or the Bylaws may require the Association to purchase; ad valorem taxes and public assessment charges lawfully levied against Common Elements owned in fee simple by the Association; expenses related to any cablevision-type services or other voice/data services provided to the Owners by the Association; and unpaid Assessments.

"County" means the county or counties in which the Property is located.

"Declaration" means this document and all subsequent amendments, if any.

"Developer" means Davenport-Granville Properties, LLC, and its successors and assigns specifically designated as Developer. In the event of a foreclosure of any instrument granted by Developer which is a lien against the Property, or a deed granted in lieu of foreclosure of that instrument, the successor to the Developer's interest shall be the "Developer" as to that portion of the Property foreclosed/deded.

"Developer Control Period" means the period commencing on the date of recordation of this Declaration with the County Registry and continuing until the earlier of: (a) December 31, 2015; (b) the date the Developer or its successors no longer owns any of the Property; and (c) the Developer transfers, in writing, the Development Rights to the Association.

"Development Rights" means all rights of control and/or approval granted to Developer, as Developer, under this Declaration, including, but not limited to, the rights granted under *Articles 4 & 5*.

"Family Members" means the spouse, parents, parents-in-law, brothers, sisters, children, and grandchildren of the designated individual.

"First Sale" means the date of the first transfer of title to a Lot by the Developer to a Builder.

"Foreclosure" means, without limitation, the judicial foreclosure of a Mortgage or the conveyance of the secured property by a deed in lieu of foreclosure of a Mortgage.

"Governmental Mortgages" refers to the Federal Housing Administration, the Department of Housing and Urban Development, the U.S. Department of Veterans Affairs, and related entities.

"Improvements" means any structure of any type or kind, including, but not limited to buildings, homes, outbuildings, parking areas, loading areas, refuse collection areas, screening walls, retaining walls, fences, hedges, mass plantings, sidewalks, poles, signs, and utility lines and facilities.

"Law" means any local, state or federal rules, regulations, or laws which may apply to the Planned Community or any Person who maintains an interest in the Planned Community or a Lot, including, but not limited to, the Zoning Entity's ordinances, codes, and regulations.

"Limited Common Elements" means a portion of the Common Elements allocated by this Declaration or by law for the exclusive use of one or more, but fewer than all, of the Lots, and as more specifically described in *Section 3.2*.

"Lot" means any tract of land, with the exception of the fee simple Common Areas, and/or structure designated for separate ownership or occupancy as reflected on the Plat. Unless the context otherwise requires, "Lot" shall include each Lot in Use and each Unsold Lot.

"Lot in Use" refers to a Lot on and after the Second Sale of that Lot or a Lot for which a certificate of occupancy has been issued by the Zoning Entity.

"Majority in Interest" means, with respect to any referenced group of Owners, a combination of any of those Owners who, in the aggregate, own more than fifty percent (50%) of the Allocated Interests owned by all of that referenced group of Owners.

"Member" means every Person who holds membership in the Association.

"Mortgage" means a mortgage, deed of trust, installment land sales contract, security agreement or other similar security instrument granting, creating or conveying a first lien upon a Lot.

"Mortgagee" means the holder, insurer or guarantor of a Mortgage.

"Occupants" means any individual(s) in possession of a Lot, including Members, lessees, guests and invitees of such individual(s), and Family Members, guests and invitees of such lessees.

"Owner" or "Lot Owner" means the record owner, whether one or more Persons, of a fee simple title to any Lot, except those having an interest merely as security for the performance of an obligation.

"Person" means an individual, a trust, an estate, or a domestic corporation, a foreign corporation, a professional corporation, a partnership, a limited partnership, a limited liability company, a foreign limited liability company, an unincorporated association, or other entity.

"Planned Community" refers to the single-family residential project known as "Davenport Subdivision" to be constructed on the Property.

"Planned Community Documents" means this Declaration, the Articles of Organization, the Bylaws, and the Act, collectively and individually.

"Plat" refers to all recorded plats describing or identifying the Lots and/or Common Areas for the Planned Community, which plat(s) are incorporated into this Declaration by this reference.

"Property" refers to that land located in Granville County, North Carolina and, at least initially, as described on *Exhibit A* attached and otherwise described on the Plat(s), together with the improvements constructed thereon and all appurtenant easements, rights and privileges "Property" shall also include any other real property subjected to the Declaration pursuant to the terms of this document.

"Rules & Regulations" means the rules and regulations governing the Project as adopted by the Association Board from time to time.

"Second Sale" means the earlier of: (i) the date of the first conveyance (whether by deed or lease) of a Lot after the First Sale (i.e., typically a sale of a Lot by a Builder to a Person who intends to occupy the house constructed on that Lot as its residence); and (ii) the date which is nine (9) months after the date of the First Sale of the Lot.

"Special Assessments" means the assessments described in *Section 7.5*.

"Surplus Funds" means funds collected by the Association pursuant to the this Declaration or otherwise which are not needed to pay current Common Expenses, the funding of a reasonable operating expense surplus, or reserves provided for in this Declaration.

"Residential Unit" means the single family residence and related improvements constructed or to be constructed on a Lot. Except where the context requires otherwise, this term shall be used interchangeably with "Lot".

"Unsold Lot" refers to a Lot which has not been the subject of a First Sale.

"Zoning Entity" means the governmental entity having zoning jurisdiction over the Property as of the date of determination.

Except as specifically provided to the contrary above, these defined terms shall be construed in a manner consistent with the comparable definitions included in the Act.

2. SUBMISSION TO ACT. Developer submits the Property to the provisions of the Act. The Property will be administered in accordance with the provisions of the Planned Community Documents. The Act contemplates that certain of its provisions may be superseded by provisions of Articles of Incorporation, bylaws, a declaration, or other agreement of the Members. It is the intent of the parties that in the event of a conflict among the Planned Community Documents, the Planned Community Documents (other than the Act) shall control and supersede the Act where permitted by law.

3. PROPERTY RIGHTS.

3.1. Common Elements or Common Areas. The "Common Elements" or "Common Areas" consist of all other parts of the Property, exclusive of the Lots themselves, and include, but are not limited to, the following:

- (a) The Property, exclusive of the Lots.
- (b) All areas designated as "open space", "private open space", "common area", "private recreation facility", or "common elements" on the Plat(s).
- (c) The private streets, if any, the "20' Private Drainage Easement" areas designated on the Plat(s), and other access facilities used in common for the Planned Community.
- (d) Improvements (e.g. buildings, landscaping structures, signs, and the like) located on Common Elements, including the Amenities.
- (e) Easements running in favor of the Association described in this Declaration or in separate, recorded easements granted to the Association.
- (f) All equipment and installations existing for common use in the Planned Community which are not otherwise dedicated to a governmental entity or serving only a single Lot, including, but not limited to, water lines, sewer lines, and storm drainage facilities located outside any Zoning Entity utility easement and/or public street right-of-way.

3.2. Limited Common Elements. Limited Common Elements shall mean and include those areas and facilities of the Common Elements reserved for exclusive use of less than all of the Lots, as identified on the Plat(s) or in this Agreement. Where a Limited Common Element is reserved for a single Lot, that Lot Owner: (i) is granted an exclusive and irrevocable license to use and occupy those Limited Common Elements associated with its Lot; and (ii) shall, at its own expense, be responsible for the maintenance and repair of its Limited Common Elements. Where a Limited Common is reserved for more than one (1) Lot: (i) those Lot Owners are granted an exclusive and irrevocable license to use and occupy those Limited Common Elements associated with its Lots; and (ii) the Association shall be responsible for the maintenance and repair of those Limited Common Elements and shall assess the applicable Lot Owners, accordingly.

3.3. Title to Common Elements. Every Owner shall have a right and easement of enjoyment in the Common Elements (the "Owners' Easement") which shall be appurtenant to and shall pass with the title to every Lot. Fee simple title (subject to this Declaration, current and subsequent years ad valorem taxes, and rights-of-way, restrictive covenants and easements of record) in the Common Area shall be conveyed to the Association. That conveyance of title to the Common Area shall be done prior to the first Second Sale of a Lot in the Planned Community.

3.4. Allocated Interests. The Allocated Interests for each Lot shall be the same and shall be proportionate to the total number of Lots in the Planned Community, as that number may vary from time to time. The Allocated Interests for an individual Lot shall be determined by taking the number one (1) and dividing that number by the total number of Lots included in the Planned Community as of the date of determination. In the event of a withdrawal or addition of Lot(s) from/to the Planned Community as permitted by the Planned Community Documents, the Allocated Interests for all of the Lots shall be recalculated in accordance with the above formula. Except for such reallocations, the Allocated Interests shall not be changed except with the unanimous consent of all of the Owners of all of the Lots and with the consent of all of the Mortgagees.

3.5. Owners' Easement of Enjoyment. Every Owner shall have a right and easement of use and enjoyment in and to the Common Elements (the "Owners' Easement"), including specifically an easement for access, ingress and egress from and to public streets, common parking, and walkways. The Owners' Easement shall be appurtenant to and shall pass with the title to every Lot subject to the following provisions:

3.5.1. Subject to all applicable governmental ordinances, the Association's right to dedicate or transfer all or any part of the Common Elements to any public agency, authority, utility, or non-profit corporation. No such dedication or transfer shall be effective unless an instrument signed by eighty percent (80%) of the Allocated Interests agreeing to the dedication or transfer has been recorded in the County registry. Any dedication or transfer shall be made subject to that portion of the Owners' Easement providing for access, ingress and egress to public streets and walkways.

3.5.2. The Association's right, in accordance with the Planned Community Documents, to borrow money for the purpose of improving the Common Elements and to mortgage those properties to secure those borrowings; provided the mortgage is subordinate to the Owners' Easement.

3.5.3. The Association's right to impose and enforce the Rules & Regulations which may restrict the use and enjoyment of the Common Elements.

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

3.5.5. Subject to all applicable governmental ordinances, the right of the Association to charge reasonable admission and other fees for the use of any Amenities.

3.5.6. As provided in **Section 7.7**, the Association's right to suspend the voting rights and the right to use any Amenities by any Owner, his Family Members, guests, etc., for any period during which any assessment against his Lot remains unpaid. The right to use the Amenities may also be suspended for a period, not to exceed one hundred twenty (120) days, for the infraction of its Rules & Regulations; provided, however, that if the infraction is continuing in nature, the suspension may be enforced until such infraction is cured.

3.6. Delegation of Use. Any Owner may delegate, in accordance with the Planned Community Documents, his right of enjoyment to the Common Elements and Amenities to Family Members and tenants who reside at his Residential Unit and, subject to any applicable Rules & Regulations, to his guests.

3.7. Private Streets. Maintenance of any private streets located within the Property shall be the sole responsibility of the Association. In no case shall the Zoning Entity or the State of North Carolina be responsible for maintaining any private street. Such streets shall be maintained in good condition and no

obstruction shall be erected or permitted to remain on such streets. The cost of maintaining such streets is a Common Expense. In no case shall the Zoning Entity be responsible for failing to provide any emergency or regular fire, police or other public service when such failure is due to lack of access to such areas due to inadequate design or construction, blocking of access routes, inadequate maintenance, or any other factor within the control of the Developer, the Association, Owners or Occupants.

3.8. Association Access. The Association or its designee shall have the right of access to any Lot during reasonable hours of the day and, in the event of emergencies, at any time: (i) to make inspections, repairs, replacements, or improvements to the Common Elements within a Lot; or (ii) to abate any violation of Law.

4. DEVELOPMENT RIGHTS.

4.1. Development Rights. During the Developer Control Period, the Developer reserves the following development rights for the entire Property: (a) to add real estate to the Property in accordance with *Section 5.2* of this Declaration; (b) to add Common Elements; (c) prior to a conveyance of the applicable Lot to an Owner, to relocate Lots within or withdraw real estate from the Property but no withdrawal shall be made without the prior consent of the Zoning Entity; (d) To construct and maintain any sales office, management office or model on any of the Unsold Lots or on any of the Common Elements shown on the Plats; (e) To alter the size of any Unsold Lot, recombine or merge two or more Unsold Lots, and subdivide any Unsold Lot but no further subdivision of any Lot shall be made without the prior consent of the Zoning Entity; (f) To convey, or cause to be conveyed, ownership in the Amenities to the Association; (g) Subject to the terms of the Bylaws, to appoint and remove any Association Board member; and (h) other rights described in NCGS §47F-1-103(28).

4.2. Exercise. Developer, in its sole discretion, and from time to time during the Developer Control Period, may exercise any or all of the Development Rights. During the Developer Control Period, no amendment to or modification of the Development Rights may be made without the Developer's prior, written consent, which it may arbitrarily withhold. After the expiration of the Developer Control Period any and all Development Rights shall be exercised by the Association's Board or as otherwise designated by the Association.

4.3. Assignment. Developer reserves the right to assign the Development Rights to any Person which acquires title to all or any portion of the Property. The assignment shall not be effective unless it is in writing (specifically describing the Development Rights being assigned), signed by the Developer, is accepted, in writing, by the assignee, and recorded with the County registry. If at any time the Development Rights have expired without an assignment by Developer, the Developer will be deemed to have assigned the Development Rights to the Association.

4.4. Delegation. The Developer may, from time to time, delegate any or all of its Development Rights to such agents as it may nominate and on such terms as it chooses.

5. ANNEXATION OF ADDITIONAL PROPERTIES.

5.1. Annexation by Members. Except as provided in *Section 5.2*, Additional Properties may be added and annexed to the Property only if sixty-seven percent (67%) of the Allocated Interests approve the annexation.

5.2. Annexation by Developer. The Developer may, at any time during the Developer Control Period and from time to time, annex all or any portion of the Additional Properties to the Property and add additional Lots within those Additional Properties to the Planned Community without the consent of the Members. Developer shall not be required to annex any particular portion(s) of the Additional Properties or annex them in any particular order. The annexation will be accomplished by the recording of

the appropriate Plat and Declaration of Annexation as required by the Act, duly executed by Developer, describing the lands annexed and Lots created. No other action or consent shall be necessary. Subsequent to recordation of the Declaration of Annexation and new Plat, the Developer shall deliver to the Association a copy of the recorded Declaration of Annexation and new Plat. Notwithstanding the preceding to the contrary, the Developer's right to annex additional properties shall be subject to the following restrictions: (a) the Improvements to be included in the annexed property (the "Annexed Improvements"), if any, must be reasonably consistent in design and function to the existing Improvements included within the Property; (b) those Annexed Improvements, if any, must be substantially completed before the annexation is effected; (c) any liens relating to those Annexed Improvements, if any, must not adversely affect the rights of existing Owners or the priority of the Mortgage; (d) all prior period property taxes and assessments must be paid or otherwise satisfactorily provided for prior to the annexation; and (e) the Governmental Mortgagee(s)' prior written consent, if any Governmental Mortgagee holds, insures or guarantees any Mortgage on an existing Lot.

5.3. Governmental Approval. Notwithstanding the language of *Sections 5.1* and *5.2* to the contrary, any addition or annexation of additional properties must, to the extent legally required, be approved by the Zoning Entity.

5.4. Title to Common Elements. Fee simple title (subject to this Declaration, current and subsequent years ad valorem taxes, and rights-of-way, restrictive covenants and easements of record) in the Common Area included within the Additional Properties annexed into the Planned Community shall be conveyed to the Association. That conveyance of title shall be done prior to the first Second Sale of Lots within that annexed property.

6. MEMBERSHIP AND VOTING RIGHTS. Ownership of a Lot shall be the sole qualification for membership in the Association. When more than one Person holds an interest in any one Lot, all such Persons shall be Members. The Association's Board may make reasonable rules relating to the proof of ownership of a Lot. Membership shall be appurtenant to and may not be separated from ownership of any Lot. Members shall be entitled to vote as prescribed in the Bylaws.

7. COVENANT FOR ASSESSMENTS.

7.1. Lien of Assessments.

7.1.1. Each Owner of a Lot by acceptance of a deed therefor (whether or not it shall be so expressed in such deed) is deemed to covenant and agree to pay to the Association the Assessments as provided in this Declaration. In addition to the Annual Assessments and the Special Assessments, the Association shall have the authority, through the Association's Board, to establish, fix and levy an individual assessment on any Lot to secure the liability of that Owner to the Association arising from Owner's breach of any of the provisions of this Declaration.

7.1.2. The Assessments shall be set on a calendar year basis (the "Annual Assessment Period") and may be collected on a monthly, quarterly or yearly basis as determined by the Association Board. Annual Assessments shall be charged to each Owner of a Lot in Use. Special Assessments shall be charged to each Lot without regard as to whether or not it is a Lot in Use. Assessments, together with interest thereon and the costs of collection (including reasonable attorney fees), shall be a lien on the applicable Lot from the due date for the Assessment as provided under the Act, continuing until paid in full, as well as a personal obligation of the person who was the Owner of the Lot at the time when the Assessment became due. While any unpaid amounts shall remain a lien on the applicable Lot, the personal obligation shall not pass to that Owner's successors in title unless expressly assumed by the successor.

7.1.3. No Owner shall be exempted from liability for the payment of Assessments by waiving the use or enjoyment of any or all of the Common Elements or by abandoning its Lot. No Owner shall be entitled to a diminution or abatement in the Assessments for any inconvenience or discomfort arising from: (i) the failure or interruption of any utility or other services; (ii) the making of repairs or improvements to the Common Elements or any Lot; or (iii) any action taken by the Association Board or the officers of the Association to comply with Law.

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

7.2. Purpose of Assessments. The Assessments shall be used exclusively for funding all Common Expenses (as previously defined), costs, expenses, damages, repairs and liabilities reasonably incurred by the Association in fulfilling the purposes of this Declaration, and reserves for these purposes.

7.3. Notice/Due Dates. Written notice of a Special Assessment or a change in the Annual Assessment shall be sent to every Owner subject thereto at least fifteen (15) days in advance of its due date. The due date for an Assessment shall be established by the Association Board, in the case of an Annual Assessment, or by the Owners, in the case of a Special Assessment. The Association shall, within ten (10) business days of a written demand for such, furnish a certificate in writing signed by an officer of the Association setting forth whether the Assessments on a specified Lot have been paid. A reasonable charge may be made by the Board for the issuance of these certificates. These certificates shall be conclusive evidence of payment of any Assessment as to third parties acting in reliance on the statement.

7.4. Annual Assessments.

7.4.1. The Annual Assessments shall commence as of the date declared by the Association Board (the "Commencement Date"). Until that time, the Developer shall pay all Common Expenses. All Lots that are a Lot in Use as of Commencement Date shall begin paying Annual Assessments in the amount determined under **Section 7.4.2.** Thereafter, Annual Assessments shall commence as to a Lot as of the date it becomes a Lot in Use and shall continue thereafter for so long as this Declaration remains in effect or this provision is subsequently amended. Liability for the Annual Assessment for the first calendar year shall be adjusted according to the number of days remaining in that calendar year as of the date the Lot becomes a Lot in Use.

7.4.2. On or before January 1st of each year, the Association Board shall adopt a proposed budget. This proposed budget shall include all anticipated revenues (including revenues from Annual Assessments to be charged in the next Annual Assessment Period), the anticipated Common Expenses for the Association for that same period, and any surplus or deficit in the Annual Assessments from the prior years. Within thirty (30) days after adoption of any proposed budget, the Association Board shall send each Owner a copy of that proposed budget and notice of a scheduled meeting of Owners to consider its ratification. The date of that meeting shall be not less than ten (10) nor more than thirty (30) days following mailing of the notice of the meeting. If the budget proposes an increase over the prior year's Annual Assessment of less than twenty-five percent (25%), the budget shall be deemed ratified unless ninety percent (90%) of the Allocated Interests of all of the Lots in Use vote to reject the budget at that meeting. If the budget proposes an increase over the prior year's Annual Assessment of twenty-five percent (25%) or more, the budget shall be deemed ratified only if approved by the vote of not less than sixty-seven percent (67%) of the Allocated Interests of all of the Lots in Use at that meeting. If the proposed budget is not ratified, the annual budget last ratified by the Lot Owners shall continue until such time as a subsequent budget is ratified by the Lot Owners. There shall be no requirement that a quorum be present at the meeting. The Approved Budget shall be the basis for calculating the Annual Assessment to be charged for each Lot in Use for the upcoming Annual Assessment Period. Upon adoption of the Approved Budget, the Association Board shall calculate the amount of the Annual Assessments for each

Owner of a Lot in Use and send a notice of that amount to each Owner of a Lot in Use as required under this Declaration. The failure or delay of the Association Board to prepare or adopt a budget or to determine the Common Expenses for any Assessment Period shall not be deemed a waiver, modification or release of the Owners' obligation to pay Assessments. In such event, the Annual Assessments that were computed on the basis of the Common Expenses for the last Assessment Period shall continue to be the Annual Assessments payable by the Owners until a new Approved Budget is ratified by the Lot Owners.

7.4.3. Notwithstanding the above to the contrary, until January 1 of the year immediately following the closing of the first Second Sale in the Planned Community, the Annual Assessment may not exceed \$30.00 per month.

7.4.4. After the Commencement Date, Developer may, but shall not be obligated to, loan the Association money to the extent that Annual Assessments paid by the Owners are inadequate. This advance shall be to the Association and on terms generally available to Developer from its lending institution. Developer, if also an Owner, shall also be responsible for the payment of Assessments as otherwise required by this Article.

7.5. Special Assessments. In addition to the Annual Assessments, the Association may, from time to time, levy a special assessment (the "Special Assessment") for the purpose of defraying in whole or in part the cost of any unexpected expense. A Special Assessment may be assessed at a meeting duly called for this purpose upon the vote of Owners holding not less than sixty-seven percent (67%) of the Allocated Interests of all of the Lots. An Owner's pro rata share of each Special Assessment shall equal its Allocated Interests percentage. A Special Assessment shall be collected from those Owners of Lots which exist as of the date the Special Assessment is approved by the Members.

7.6. Initial Assessment. As of the date a Lot becomes a Lot in Use, in addition to the Annual Assessment otherwise due for the remainder of the then current payment period, an amount equal to two months' worth of the then current Annual Assessment (the "Initial Assessment") shall be collected from the Owner or purchaser and paid to the Association. The Initial Assessment shall not constitute advance payments of Annual Assessments, but shall nevertheless be used by the Association in the manner specified for Annual Assessments.

7.7. Fines/Suspensions. The Association Board, after a hearing as required under the Act and/or Bylaws, may impose fines against any Lot and/or suspend a Member's voting privileges for a failure to comply with the Declaration or Rules & Regulations. These fines shall be collected and enforced as an Assessment otherwise due to the Association from that Owner. Fines shall be paid not later than thirty (30) days after notice of the fine is given to the offending Owner. These fines shall not be construed to be exclusive and shall be in addition to all other rights and remedies to which the Association may be otherwise legally entitled. The amount of any fine imposed shall be determined by the Association Board; but, shall not, in any event, exceed One Hundred Fifty Dollars (\$150.00) per day for each day of continued violation or non-compliance. Such fines shall be assessments secured by liens as provided under the Act.

7.8. Uniform Rate of Assessment. Both Annual Assessments and Special Assessments must be fixed at a uniform rate for all Lots in Use or Lots, as the case may be, subject to the following:

- (a) the Association Board may levy an individual assessment on any Lot to secure the liability of that Owner to the Association arising from that Owner's breach of any of the provisions of this Declaration or the Rules and Regulations.

- (b) Any Common Expense or portion thereof benefitting fewer than all of the Lots shall be assessed exclusively against those Lots benefitted.
- (c) Assessments to pay a judgment against the Association may be made only against the Lots in the Planned Community at the time the judgment was entered, in proportion to their Allocated Interests.
- (d) If any Common Expense is caused by the negligence or misconduct of any Owner or Occupant, the Association may assess that expense exclusively against that Owner's Lot.
- (e) If Allocated Interests are reallocated, Assessments and any installment thereof not yet due shall be recalculated in accordance with the reallocated Allocated Interests.
- (f) Any Common Expense associated with the maintenance, repair, or replacement of a Limited Common Element shall be equally assessed against the Lot(s) to which that Limited Common Element is assigned.

7.9. Non-Payment of Assessment Remedies of the Association. Any Assessments which are not paid when due shall be delinquent. The Association shall have the option to declare the entire outstanding balance of any Assessment immediately due and payable if any installment thereof becomes delinquent. If the Assessment is not paid within thirty (30) days after the due date, the assessment shall incur a late charge in the then applicable amount fixed by the Association Board, shall bear interest from the date of delinquency at the lesser of the rate set by the Association Board (if one has been set) or eighteen percent (18%) per annum, and shall constitute a lien on that Lot when a claim of lien is filed of record as provided under the Act. The Association may bring an action at law against the responsible Owner and/or foreclose the lien against the applicable Lot in like manner as a mortgage on real estate under power of sale under Article 2A of Chapter 45 of the General Statutes. Interest, costs, late charges, fines, and reasonable attorney fees incurred in enforcement of the lien shall be added to the amount of the delinquent Assessment. Each Owner, by the acceptance of a deed to a Lot, expressly vests in the Association, its agents or assigns, the right and power to bring all actions against the Owner, personally, for the collection of all debts due by it to the Association and to enforce the lien by all methods available for the enforcement of such liens, including foreclosure by an action brought in the name of the Association in a like manner as a mortgage or a deed of trust lien on real property in accordance with Article 2A of Chapter 45 of the General Statutes. Each Owner also expressly grants to the Association a power of sale in connection with foreclosure of a lien for Assessments. The lien provided for in this Article shall be in favor of the Association acting on behalf of the Owners, which shall have the power to bid in at foreclosure and to acquire and hold, lease, mortgage and convey the foreclosed Lot. No Owner may waive or otherwise escape liability for Assessments by non-use of the Common Elements or abandonment of his Lot. This Section does not prohibit other actions to recover the sums due from an Owner nor prohibit the Association from taking a deed in lieu of foreclosure.

7.10. Subordination of the Lien. The lien of the Assessments shall be subordinated to the lien of the Mortgage on a Lot. Provided the Association is given prior written notice of such, the sale or transfer of a Lot pursuant to a Foreclosure shall extinguish the lien of the delinquent Assessments for that Lot. Otherwise, the sale or transfer of a Lot shall not release or otherwise affect the lien of delinquent Assessments; provided, that no Owner shall be liable for the payment of any part of any Assessments assessed against its Lot subsequent to a sale, transfer, or other conveyance by it of that Lot. In no event, however, shall any sale or transfer, whether pursuant to a Foreclosure or not, relieve the prior Owner from personal liability for the delinquent Assessments or the Lot from liability for any Assessments subsequently becoming due or from the lien therefor.

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

7.12. Surplus Funds. Except as determined by the Association Board from time to time, Surplus funds shall not be distributed to the Owners, pro rata, in accordance with their respective Allocated Interests or be used as a credit against each Owner's future Assessments.

8. MAINTENANCE.

8.1. Maintenance Responsibility. Except as specifically assigned to an Owner elsewhere in this Declaration, the Association shall be responsible for the repair, replacement, and maintenance of the Common Elements including, but not limited to, any recreation areas, parking areas, walks, and all landscaped areas located within the Common Elements. Maintenance, upkeep, and repairs of the Residential Unit and the Lot shall be the sole responsibility of the individual Lot Owner and not in any manner the Association's. An Owner shall not do anything that will impair any easement owned by the Association, nor do any act or allow any condition to exist which will adversely affect the other Lots or their Owners.

8.2. Cost of Maintenance. In the event that the need for maintenance or repair to the Common Elements is caused through the willful or negligent act of the Owner, his Family Members, guests tenants, contractors, agents or invitees, the cost of such maintenance or repair shall be added to and become a part of the Assessment to which the Lot is subject. In the event that the need for maintenance or repair to a Lot or a Residential Unit is caused through the willful or negligent act of the Association or its contractors, employees, or agents, the cost of such maintenance or repair shall be recoverable from the Association. Notwithstanding the preceding to the contrary, a hearing as required under the Act and/or Bylaws shall be conducted prior to assessing any liability under this Section. A claim for reimbursement of damages shall be limited to the jurisdictional amount established for small claims by G.S. 7A- 210. When such claim exceeds that jurisdictional amount, liability of any Owner charged or the Association shall be determined as otherwise provided by law. In either case, liabilities of Owners shall be assessments secured by lien as provided under the Act and liabilities of the Association may be offset by the Owner against sums owing to the Association and if so offset, shall reduce the amount of any lien of the Association against the Owner's Lot.

9. INSURANCE/CONDEMNATION.

9.1. Association Coverage.

9.1.1. Commencing not later than the time of the First Sale, the Association Board shall obtain and maintain, to the extent available, covering the interest of the Association, the Association Board, and all Owners and their Mortgagees, as their interests may appear:

(a) Property insurance on the Common Elements insuring against all risks of direct physical loss commonly insured against including fire and extended coverage perils. The total amount of insurance after application of any deductibles shall be not less than the full replacement cost of the insured property at the time the insurance is purchased and at each renewal date, exclusive of land, excavations, foundations, and other items normally excluded from property policies. This coverage shall not, however, include any improvements or betterments installed by an Owner or any of the personal property belonging to an Owner whether or not located inside a Residential Unit.

(b) Liability insurance in reasonable amounts, covering all occurrences commonly insured against for death, bodily injury, and property damage arising out of or in connection with the use, ownership, or maintenance of the Common Elements.

if the insurance described above is not reasonably available, the Association promptly shall cause notice of that fact to be sent to all Owners. Insurance policies carried pursuant to this Section shall provide that: (i) Each Owner is an insured person under the policy to the extent of the Owner's insurable interest; (ii) The insurer waives its right to subrogation under the policy against any Owner or member of the Owner's household; (iii) No act or omission by any Owner, unless acting within the scope of the owner's authority on behalf of the Association, will preclude recovery under the policy; (iv) If, at the time of a loss under the policy, there is other insurance in the name of an Owner covering the same risk covered by the policy, the Association's policy provides primary insurance; and the insurer issuing the policy may not cancel or refuse to renew it until thirty (30) days after notice of the proposed cancellation or non-renewal has been mailed to the Association, each Owner, and each Mortgagee to whom certificates or memoranda of insurance have been issued at their respective last known addresses.

9.1.2. The Association Board may also obtain and maintain (in amounts to be determined by it): (1) fidelity insurance covering all members of the Association Board, officers, or employees of the Association who handle funds of the Association; (2) workmen's compensation insurance; and (3) such other insurance coverages as it deems desirable and necessary. The commercial general liability insurance shall not, however, cover the liability of an Owner arising from an occurrence within its own Lot.

9.1.3. The proceeds of all policies of physical damage insurance shall be payable to the Association to be applied for the purpose of repairing, restoring, or rebuilding the Common Elements unless otherwise determined by the Owners, as provided below, and the Association Board shall arrange for such repair or work. Owners and lienholders are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the property has been completely repaired or restored, or the Planned Community is terminated. If the insurance proceeds are insufficient to cover the cost of such work, the balance of the cost will be assessed among all Owners in proportion to their respective interests in the Common Elements.

9.1.4. All policies of physical damage insurance shall contain waivers of subrogation and of any reduction of pro rata liability of the insurer as a result of any insurance carried by Owners or of any invalidity arising from any acts of the insured or any Owners and shall provide that such policies may not be canceled or substantially modified without at least thirty (30) days' prior written notice to the named insured, including all first Mortgagees of Lots.

9.2. **Owner's Coverage.** It shall be the responsibility of each Owner, at his own expense, to obtain hazard insurance in an amount sufficient to cover the full replacement cost of any repair or reconstruction work in the event of damage or destruction to his Residential Unit from any hazard. Each Owner shall satisfy the Association's Board that at all times his property is covered by the required hazard insurance.

9.3. Repair/Reconstruction.

9.3.1. In the event of damage to an Owner's property, the Owner shall contract to rebuild or repair such damaged portions of the property in as good condition as formerly. In the event that more than fifty percent (50%) of the Residential Unit is destroyed or damaged (as determined on a relative value basis; i.e., the costs of repairs versus the then current tax value), the Owner, in its discretion, may elect to demolish the Residential Unit and restore the Lot; provided that that demolition/restoration is completed within one hundred fifty (150) days of the date of the casualty. In the event the Owner fails to promptly commence and thereafter diligently pursue the required repair/rebuilding or demolition/restoration, as the case may be, the Association's Board, upon obtaining the required Member approval, shall have the power to demolish the Residential Unit and restore the Lot and charge the Owner for all reasonable and necessary costs incurred in completing that demolition/restoration.

9.3.2. In the event of damage to any property covered by insurance written in the name of the Association, the Association's Board shall, with concurrence of the Mortgagee, if any, upon receipt of the insurance proceeds, contract to rebuild or repair the damage to as good condition as formerly. In the event the insurance proceeds are insufficient to pay all of the costs of repairing and/or rebuilding to the same condition as formerly, the Association Board shall, upon obtaining the required Member approval, levy a Special Assessment against all Members to make up any deficiency. Notwithstanding the preceding to the contrary, such repair or replacement shall not be undertaken if: (i) the Planned Community is terminated as provided under the Planned Community Documents; (ii) repair/replacement would be prohibited by any Law; or (iii) except as otherwise required by Law, if eighty percent (80%) or more of the Owners (including all of the Owners of the Limited Common Elements) vote not to repair/replace the damage. In that event the entire Planned Community is not repaired/replaced, the insurance proceeds shall be used/distributed in accordance with the requirements of the Act.

9.3.3. Each Owner shall nevertheless be liable for the expense of any maintenance, repair, or replacement rendered necessary by its act, neglect, or carelessness, to the extent that such expense is not met by the proceeds of insurance carried by the Association Board. Such liability shall include any increase in insurance rates occasioned by use, misuse, occupancy, or abandonment of a Lot or its appurtenances. This subsection shall not, however, be construed so as to modify any waiver by insurance companies of rights of subrogation.

9.4. Ownership/Proceeds. All contracts of insurance purchased by the Association shall be for the benefit of the Association, the Owners, and their respective Mortgagees, if any, as their interests may appear, and shall provide that all proceeds thereof shall be payable to the Association as insurance trustee. The sole duty of the Association as insurance trustee shall be to receive any proceeds as are paid and to hold them in trust for the purposes stated in this Declaration. The proceeds received by the insurance trustee shall be distributed to or for the benefit of the appropriate beneficiary(ies) as required by the Planned Community Documents.

9.5. Premiums. Premiums for contracts of insurance purchased by the Association shall be paid by the Association and shall be included in Common Expenses.

9.6. Prohibited Acts. No Owner shall do or keep anything on the Property which shall cause an increase in the premiums for or the cancellation of any insurance maintained by the Association.

9.7. Condemnation.

9.7.1. In the event of a taking in condemnation or by eminent domain of part or all of the Common Elements, the award made for such taking shall be payable to the Association. If seventy five percent (75%) or more of the Owners (with the written approval of the applicable Mortgagees) duly and promptly approve the repair and restoration of such Common Elements, the Association Board shall arrange for the repair and restoration of such Common Elements and shall disburse the proceeds of such award to the contractors engaged in such repair and restoration in appropriate progress payments. In the event that seventy five percent (75%) or more of Lot Owners do not duly and promptly approve the repair and restoration of such Common Elements, or if the award exceeds the cost of such repair or restoration, the Association Board shall disburse the net proceeds among all Owners in proportion to their respective Allocated Interest. As used in this Section, the words "promptly approve" shall mean not more than sixty (60) days from the date of such taking.

9.7.2. If a Lot is acquired by eminent domain or if part of a Lot is acquired by eminent domain leaving the Owner with a remnant which may not practically or lawfully be used for any purpose permitted by the Declaration, the award shall compensate the Owner for his Lot and its interest in the Common Elements. Upon acquisition, unless the decree otherwise provides, the Allocated Interests are

automatically reallocated to the remaining Lots, exclusive of the Lot taken. If there is any reallocation under of Allocated Interests as provided above, the Association shall promptly prepare, execute, and record an amendment to the Declaration reflecting the reallocations. Any remnant of a Lot remaining after part of a Lot is taken under this subsection shall thereafter be part of the Common Elements.

9.7.3. Any portion of a condemnation award attributable to the acquisition of a Limited Common Element shall be apportioned among the owners of the Lots to which that Limited Common Element was allocated at the time of acquisition based on their relative Allocated Interests before the taking.

10. EASEMENTS.

10.1. Association Easements. An easement is granted to the Association and its designees to enter in or to cross over the Common Areas and Lots to the extent reasonably necessary to perform its obligations under this Declaration or the Act. Every Lot shall be subject to an easement for entry by the Association and its designees for the purpose of correcting, repairing, or alleviating any emergency condition which arises upon any Lot and that endangers any improvement or portion of the Common Elements. In addition to those easements described in the following subsections, the Developer (during the Developer Control Period) and the Association shall have the right to subject the Property to easements which it reasonably deems beneficial to the development and/or operation of the Planned Community. The cost of maintaining these easements shall be a Common Expense.

10.2. Utility Easements.

10.2.1. The Developer reserves unto itself and the Association a perpetual, nonexclusive alienable, and releasable easement and right, on, over and under the Property to erect, maintain, and use poles, wires, cables, conduits, lines, drainage ways, sewers, water mains, and other suitable equipment for the conveyance and use of electricity, telephone equipment, gas, sewer, water drainage, cablevision, or other public conveniences or utilities on, in or over those portions of the Property as may be reasonably required to serve the Lots. Notwithstanding such, no sewers, electrical lines, water lines, or other utility equipment or facilities may be installed or relocated in the Common Elements except as approved by the Developer or, after the end of the Developer Control Period, the Association. Should any utility furnishing a service covered by this general easement request a specific easement by separate recordable documents, Developer or, after the end of the Developer Control Period, the Association will have the right and authority to grant such easement. These easements and rights expressly include the right to cut any trees, bushes or shrubbery, make any gradings of the soil, or to take any other similar action reasonably necessary to provide economical and safe utility installation to maintain reasonable standards of health, safety, and appearance. Such rights may be exercised by any licensee of the Developer. This reservation shall not create any obligation on the part of the Developer to provide or maintain any such utility or service. Whenever possible, utilities within the Property, whether located within the Common Elements or not, shall be installed and maintained underground. The easement provided for in this Article shall in no way affect other recorded easements on the Property.

10.2.2. As part of the development of the Planned Community, Developer shall construct an integrated sewer collection, water distribution, and storm drainage system (collectively the "Utility Facilities") to serve one or more of the Lots in the Planned Community. Developer establishes and/or reserves in the name of the Association and for the benefit of each Owner: (a) a perpetual, non-exclusive license to use, in common with the Owners, the Utility Facilities; and (b) a perpetual, non-exclusive, appurtenant easement over the Utility Facilities Easement Areas (defined below) for the purposes of maintaining the Utility Facilities. It is the Developer's intent that the easement/license shall be located on the Property where the Utility Facilities are actually constructed (the "Utility Facilities Easement Areas") and this easement/license shall be deemed automatically amended to conform with those constructed

locations. The as-built surveys showing the location of the Utility Facilities, as constructed, are incorporated into this document by this reference. This reservation is in the nature of a "blanket" easement/license and shall cover all Utility Facilities, existing now or in the future, which are intended to be used in common by the Planned Community and which are not otherwise dedicated to a governmental entity or conveyed to, or owned by, a private utility. The easement/license shall be binding on all parties having any right, title, or interest in the Property or any part thereof, their heirs, successors, and assigns, shall inure to the benefit of Developer and each Owner, and shall be deemed a part of the Common Elements and shall be maintained by the Association. This reservation shall not create any obligation on the part of the Developer to provide or maintain any such utility or service.

10.3. Temporary Construction Access and Disturbance Easement. A temporary construction easement over, through and to the Property is reserved and established in favor of Developer for purposes of ingress, egress, regress, conduct of construction activity, storage of construction materials and the necessary disturbance of land for the initial construction contemplated for the Planned Community. This easement shall be used only as and when necessary to facilitate the construction of improvements at any time on a Lot by Developer, as well as the extension of driveways, sidewalks, underground drainage and utility conduit and hookups to any dwelling structure in the Planned Community. Following construction, disturbed areas will be stabilized and restored to the extent reasonably practical.

10.4. Repair, Maintenance and Reconstruction Easement.

10.4.1. The Association shall have a perpetual access easement over the Common Elements and Lots to the extent reasonably necessary to perform repair, maintenance, replacement or reconstruction obligations under this Declaration or the Act. The repair, maintenance or reconstruction shall be done expeditiously and, upon completion of the work, the Association shall, at its expense, restore, to the extent reasonably practical, the Lot and adjoining Lots to as near the same condition as that which existed prior to the commencement of the work. Should the Association fail to restore the Lots as required, the affected Owner(s) may, at the Association's expense, complete the required restoration.

10.4.2. Each Owner shall have a perpetual access easement over the adjoining Common Elements and Lots to the extent reasonably necessary to perform repair, maintenance or reconstruction of his Lot. The repair, maintenance or reconstruction shall be done expeditiously and, upon completion of the work, the Owner shall, at its expense, restore, to the extent reasonably practical, the adjoining Common Elements and Lots to as near the same condition as that which existed prior to the commencement of the work. Should the Owner fail to restore the Common Elements and Lots as required, the adjoining Lot Owner and/or Association may, at the other Lot Owner's expense, complete the required restoration.

10.4.3. The easement granted under this *Section 10.4* shall be restricted to that Common Elements and/or adjoining Lots which shall be reasonably servient and proximate to the Lot(s) upon which the construction is taking place.

10.5. Easement for Minor Encroachments. All Lots and the Common Elements shall be subject to a perpetual easement for the encroachment of the initial Improvements constructed to the extent that such initial Improvements actually encroach. These authorized encroachments shall include, but not be limited to, such items as overhanging eaves, roofs, gutters, downspouts, exterior storage rooms, bay windows, stoops, decks, patios, porches, steps and walls.

10.6. Drainage Easement. For a period of twenty (20) years from the date of this Declaration, the Developer reserves an easement over and under the Property to maintain and to correct drainage or surface water runoff in order to maintain reasonable standards of health, safety and appearance. Such right expressly includes the right to cut any trees, bushes or shrubbery, grade the soil, or take any other

similar action reasonably necessary. After such action has been completed, the Developer shall restore the affected property to its previous condition to the extent practicable. Developer shall give the Association thirty (30) days' advance written notice of Developer's intent each time it plans to exercise its rights pursuant to this *Section 10.6*.

10.7. Governmental Easements. Developer reserves an easement for the benefit of the appropriate governmental entity over the Common Elements, existing now or in the future, for the setting, removal, and reading of water meters, the maintenance and replacement of water, sewage, and drainage facilities and the collection of garbage. An easement is also granted to all police, fire protection, garbage, mail delivery, ambulance, and all similar persons to enter upon the Community's streets and the Common Elements in the performance of their duties.

10.8. Landscape/Sign Easement. Developer establishes and/or reserves in the name of the Association and for the benefit of each Owner, a perpetual, non-exclusive easement over the "Landscape & Sign Easement" areas described on the Plat (collectively, the "Landscape/Sign Easement Areas"). This easement over the Landscape/Sign Easement Areas shall be for the purposes of installing, replacing, repairing and/or maintaining plants, shrubs, trees, grass, signs and monuments identifying the Planned Community, sprinkler systems, lighting and other landscape architectural materials (the "Landscape/Signs"). Except as may be constructed by the Developer prior to conveyance of a Lot to an Owner, the initial installation of the Landscaping/Signs and the related facilities and the repair, replacement and maintenance obligations for the Landscaping/Signs and the Landscaping/Sign Easement Areas shall be the Association's sole responsibility and expense. Only those improvements installed by Developer and/or the Association or otherwise approved by the Association, in writing, shall be located within any of the Landscaping/Sign Easement Areas.

11. LAND USE REGULATIONS.

11.1. Uses. Notwithstanding the uses otherwise permitted by the Zoning Entity's applicable zoning code and unless otherwise permitted by this Declaration, use of each Lot shall be strictly limited to single family residential purposes and those other purposes expressly permitted by this Declaration. Upon the prior written consent of Developer (during the Developer Control Period) or Association Board, which consent may be arbitrarily withheld, any Lot may be used as a professional office or for any other purpose. Even if such other use is permitted, each Owner is nevertheless required to comply with all other restrictions of this Declaration and the Laws. Notwithstanding anything in this Section or the Planned Community Documents to the contrary, Developer may, without the consent of the Association Board or other Owners, use any Unsold Lots as model Lots and offices for the selling, renting, management, operation, and promotion of the Unsold Lots or for any other purpose, subject only to compliance with Law.

11.2. Occupancy. The number of Occupants in each Residential Unit shall not exceed: (i) the Family Members of one family only; or (ii) two (2) individuals unrelated by blood or marriage per bedroom designated for that Residential Unit. No transient tenants may be accommodated; provided, however, that the guests and invitees of Occupants and their lessees may reside in any one Residential Unit for a maximum period of thirty (30) days per calendar year. A Residential Unit owned or leased by a corporation, partnership, fiduciary, or any other entity may be occupied by an officer, director, partner owner, beneficiaries, or employees of such entity, or by Family Members or guests of any of the foregoing.

11.3. Animals. No animals, livestock or poultry of any kind shall be raised, bred or kept in the Lots, except that a maximum of two (2) domesticated, household pets may be kept in any one Lot, provided that in no event shall any pet be maintained for commercial purposes and that no pet weighing more than one-hundred (100) lbs. shall be permitted.

11.4. Garbage. All garbage, trash, or rubbish shall be regularly removed from the Lot and shall not be allowed to unreasonably accumulate; but shall only be put at curbside for pickup on the regularly scheduled dates.

11.5. Leasing. No Lot or portion thereof shall be leased for transient or hotel purposes. An Owner may nevertheless lease the entire Lot; provided that: (i) each lease must be in writing, must be for a period of not less than one (1) year, and must provide that it is subject to this Declaration and the Bylaws and that any failure by a tenant to comply with such shall be a default under the lease; and (ii) all leasing/management activities for the Lot to be leased must be conducted through the management company designated for that purpose by the Association. The Owner shall promptly provide the Association with copies of any and all leases entered into by the Owner. In no event, however, shall a portion of a Lot (as opposed to the entire Lot) be sold, conveyed, leased, or subleased.

11.6. Drapes, Blinds, Etc. The side of all, drapes, blinds, and/or other window treatments which is visible from the exterior of a Residential Unit shall be white or neutral in color.

11.7. Utility Devices. Except as required by Law, no exterior television or radio antennas, satellite dishes or solar panels or other utility devices, of any sort shall be placed, allowed or permitted upon any portion of the exterior of the Residential Units without the prior written approval and the authorization of the Developer (during the Developer Control Period) or the Association Board. The Developer and the Association, for the common benefit of the Owners, reserves the right to install within the Property such utility devices necessary to provide cable TV or similar services.

11.8. Business/Obnoxious Activity. Except as contemplated by Section 11.1, no business activity of any kind or any obnoxious or offensive activity shall be carried on the Property, nor shall anything be done which may be or may become a nuisance or annoyance to the neighborhood. Nor shall the Property be used in any way or for any purpose which may endanger the health or unreasonably disturb an Owner or his tenants or invitees. Except as otherwise specifically authorized by the Association, no "for sale" or "for rent" signs exceeding four (4) square feet in area, advertising signs, billboards, political signs, unsightly objects, or nuisances shall be erected, placed or permitted to remain on the Property, and in no event in the Common Elements. Notwithstanding any provision in this Article to the contrary, during the period of development and sale of the Lots, Developer is permitted, subject to the Laws, to maintain such facilities and conduct such sales activities as Developer deems reasonably required, convenient, or incidental to the development and sale of the Lots. These facilities/activities shall include but not be limited to sales tours, sales parties and promotions at the Amenities, a business/sales office, storage area, construction yards, model units, and signs. During the Developer Control Period, this provision shall not be amended or revoked without the Developer's written consent.

11.9. Vehicles. No boats, recreation vehicles, campers, motorcycles, tractors, trucks (other than one pick-up truck rated one-half ton or less), or trailers (the "Vehicles") of any Occupant shall be parked within the Common Elements, or, except as permitted by Law, within the right-of-way of any street in or adjacent to the Planned Community. All Vehicles shall be stored either within the Owner's garage or other facilities not located on the streets in the Planned Community.

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

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

11.12. Parking. Adequate off-street parking shall be provided by the Owner of each Lot for the parking of automobiles and Vehicles owned by its Occupants. Occupants shall not be permitted to park their automobiles and Vehicles on the streets or Common Elements in the Planned Community.

11.13. Subdivision/Recombination. Lots may not be subdivided or recombined without the Association Board's prior written approval, which may be arbitrarily withheld, or, in any event, where otherwise prohibited by the Laws.

11.14. Governmental Regulations. Each Owner shall comply with all Laws applicable to its Lots and/or Common Elements. In the event of any conflict between any provision of such Laws and any provision of this Declaration, the more restrictive provision shall apply.

11.15. Additional Restrictions. The Developer (during the Developer Control Period) and thereafter, the Association or the Association's Board shall have the power to formulate, amend, publish and enforce other reasonable rules and regulations concerning the architectural control and use of the Property.

11.16. Use of Common Elements. The Common Elements shall be used only for the furnishing of the services and facilities and for the other uses for which they are reasonably intended and which are incident to the use and occupancy of the Lots. No Owner may construct, install, place, store or otherwise maintain any improvements or personal property on or within the Common Elements. Notwithstanding the preceding or anything in this Declaration to the contrary, Developer shall have the right, without charge or limitation and so long as there are any Unsold Lots, to: (i) erect and maintain signs of any size or content determined by Developer on or about any portion of the Common Elements; (ii) have its employees, contractors, subcontractors, and sales agents present on the Property; and (iii) do all things necessary or appropriate, including the use of the Common Elements, to sell, lease, manage, or operate Unsold Lots and to comply with Developer's obligations under the Planned Community Documents. In no event, however, shall Developer be entitled to use any Common Elements in such a manner as will unreasonably interfere with the use of any Lot for its permitted purposes or violate any Law.

11.17. Waiver. Notwithstanding anything above to the contrary, the Developer (during the Developer Control Period) or the Association Board shall have the right, in the exercise of their reasonable discretion, to waive one or more violations of the requirements of this Article. No waiver shall be effective unless in writing and nevertheless shall not operate as a waiver of any other requirement respecting the Lot in question or any other Lots subject to this Declaration. No waiver shall be effective if it shall cause the Lot or structures thereon to be in non-conformance with any Law.

12. ARCHITECTURAL COMMITTEE/ARCHITECTURAL CONTROL.

12.1. Members. Unless otherwise determined by the Association Board, the Architectural Committee shall consist of the members of the Association Board.

12.2. Powers.

12.2.1. The Architectural Committee shall have the right to refuse to approve any plans and specifications for Improvements proposed to be constructed on a Lot (the "Plans & Specifications") which are not suitable or desirable, in its sole discretion, for aesthetic or any other reasons, provided such approval is not unreasonably withheld. The actions of the Architectural Committee in the exercise of its discretion by its approval or disapproval of plans and other information submitted to it, or with respect to any other matter before it, shall be conclusive and binding on all interested Parties. In approving or disapproving Plans & Specifications, the Architectural Committee shall consider the purposes of the

Declaration as discussed in the Recitals, including the suitability of the proposed Improvements and materials to be used in those Improvements, the Lot on which it is proposed to be erected, and the effect of the Improvements on adjacent or neighboring Lots.

12.2.2. The Architectural Committee and the Association Board is specifically empowered to enforce the provisions of this Declaration by any legal or equitable remedy. In the event it becomes necessary to resort to litigation to determine the propriety of any constructed Improvement, or to remove any unapproved Improvements, the prevailing party shall be entitled to recovery of all court costs and expenses (including reasonable attorney's fees).

12.2.3. The Association and its agents shall have the right, but not the obligation, to enter and inspect, without being deemed guilty of trespass, any Lot or Residential Unit for the purpose of determining whether the Improvements have been or are being built in compliance with the Plans & Specifications approved by the Architectural Committee or whether there exists any construction of any Improvements which violates the terms of any approval by the Architectural Committee, or the terms of this Declaration or of any other applicable regulations or ordinances.

12.2.4. The Association, upon request of the Architectural Committee and after reasonable notice to the offending Owner, may enter upon any Lot or Residential Unit at any reasonable time, without being deemed guilty of trespass, and remove any Improvement constructed, reconstructed, refinished, altered or maintained in violation of this Declaration and, as necessary, repair the Residential Unit. The Owner of the Improvement shall immediately reimburse the Association for all expenses incurred in connection with such removal/repair (the "Removal/Repair Costs"). If the Owner fails to reimburse the Association within thirty (30) days after the due date, the Removal/Repair Costs shall incur a late charge in the then applicable amount fixed by the Association Board, shall bear interest from the date of delinquency at the lesser of the rate set by the Association Board (if one has been set) or eighteen percent (18%) per annum, and shall constitute a lien on that Lot when a claim of lien is filed of record as provided under the Act. This lien shall be enforceable by the Association as provided in *Section 7.9*.

12.3. Approval of Plans & Specs. No Improvement shall be commenced, erected, or maintained upon the Property, nor shall an Improvement be repaired or rebuilt after destruction by any hazard until completed Plans & Specifications, showing the nature, kind, space, height, materials, and location of the Improvement shall have been submitted to and approved in writing by the Architectural Committee (the "Approved Improvements"). A failure to approve or disapprove completed Plans & Specifications within forty-five (45) days after they have been submitted shall be deemed to be an approval of those Plans & Specifications. The actions of the Board in the exercise of its discretion by its approval or disapproval of plans and other information submitted to it, or with respect to any other matter before it, shall be conclusive and binding on all interested parties.

12.4. Building Sites. Each Lot, as approved by the appropriate governmental entity, shall constitute a building site (a "Building Site") and shall be used for single-family, residential purposes only. The lay of the Lots as shown on the recorded Plat shall be substantially adhered to; provided, however, that with the prior written approval of the Developer (during the Developer Control Period), or, thereafter, the Association Board or the Architectural Committee, and the appropriate governmental authority, the size and shape of any Lot may be altered. More than one Lot may be used as one Building Site provided the location of any structure permitted thereon is approved in writing by the Architectural Committee or the Developer, its successors or assigns, and said Lot is recombined as provided in N.C. General Statute 160A-376(1). In no event, however, shall a Lot or group of Lots be resubdivided or recombined in violation of any applicable zoning or other laws in force at the time of the change.

12.5. Setbacks. No structure shall be located on any Building Site in relationship to its boundary lines any nearer than the distances permitted by the applicable zoning ordinances. For the purposes of this covenant, eaves, steps, carports and open porches shall not be considered as a part of a Building, provided, however, that this shall not be construed to permit any portion of a Building on a Building Site

to encroach upon another Lot. Provided it otherwise complies with the applicable zoning ordinances and the setbacks, if any, shown on the applicable recorded Plat, the Developer and/or the Architectural Committee may approve by written waiver a violation of these requirements.

12.6. Structures. Improvements on any Building Site shall be restricted solely to residential dwellings for residential use. All Improvements erected upon a Lot shall be of new construction. No residential structure, which has a minimum area of less than 1,350 square feet of heated area, exclusive of porches, basement and garage, shall be erected or placed on any Building Site. No building or structures shall exceed three (3) stories in height. No structures of a temporary character, manufactured home, mobile home, trailer, tent, shack, garage, barn or other out-building shall be used on any portion of the Property at any time as a residence, either temporarily or permanently.

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

12.8. Expenses. Except as provided below, all expenses of the Architectural Committee shall be paid by the Association and shall constitute a Common Expense. The Architectural Committee shall have the right to charge a fee for each application submitted to it for review, in an amount which may be established by the Association Board from time to time, and such fees shall be collected by the Architectural Committee and remitted to the Association to help defray the expenses of the Architectural Committee's operation.

12.9. Other Requirements.

12.9.1. Compliance with the Architectural Committee's process is not a substitute for compliance with the Zoning Entity's building, zoning and subdivision regulations, and each Owner is responsible for obtaining all approvals, licenses and permits as may be required prior to commencing construction of any Improvements. Approval by the Architectural Committee does not necessarily assure approval by the Zoning Entity.

12.9.2. All Approved Improvements commenced on the Property shall be prosecuted diligently to completion and shall be completed within the time period specified in the Architectural Committee's approval or, if no time period is specified, a reasonable time. If an Improvement is commenced and construction is then abandoned for more than ten (10) days, or if construction is not completed within the required time period, then after notice and opportunity for hearing, the Association may impose a fine in an amount established from time to time by the Architectural Committee to be charged against the Owner of the Lot until construction is resumed, or the Improvement is completed, as applicable, unless the Owner can prove to the satisfaction of the Architectural Committee that such abandonment is for circumstances beyond the Owner's control, other than the Owner's failure or refusal to pay money. Such charges shall be a fine as contemplated under **Section 7.7.**

12.10. Limitation of Liability. Neither the Association, the Association Board, the Developer, the Architectural Committee or any officer, employee, director or members thereof (the "Indemnified Parties") shall be liable for damages to any persons by reason of: (i) mistake in judgment, negligence or nonfeasance arising out of or in connection with the approval, disapproval or failure to approve any Plans & Specifications; (ii) any defects in any Plans & Specifications submitted, revised or approved by the Architectural Committee; or (iii) any structural or other defects in any work done according to such Plans and Specifications. Every person who submits Plans & Specifications for approval agrees, by submission

of such Plans & Specifications, that it will not bring any action or suit to recover any such damages. In all events the Indemnified Parties shall be defended and indemnified by the Association in any such suit or proceeding which may arise by reason of the Architectural Committee's decision; provided that the Association shall not be obligated to indemnify any Person to the extent any such Person is adjudged to be liable for gross negligence or misconduct in the performance of its duties.

13. MORTGAGES/MORTGAGEES.

13.1. Notice. An Owner shall notify the Association Board of the name and address of the Mortgagee for each Mortgage on its Lot and shall file a conformed copy of the Mortgage(s) with the Association Board. Upon a Mortgagee's written request (an "Eligible Mortgagee"), the Association Board shall promptly provide written notice to the Eligible Mortgagee of: (a) any unpaid Assessments due from, or any other default by, the Owner of the mortgaged Lot; (b) any condemnation or casualty loss that affects a material portion of the Residential Unit or the mortgaged Lot; (c) a lapse, cancellation, or material modification of any insurance policy maintained by the Association; and (d) any proposed action that requires the consent of the holders of mortgages constituting first liens on Lots. Upon the happening of a default under the terms of the mortgage or other liens which would permit the holder to declare the entire principal sum due, notice of the intention of the holder to do so shall be given to the Association Board, but the failure to give such notice shall not prevent the holder from instituting a Foreclosure action. The Foreclosure of a Mortgage will extinguish the lien for any unpaid Assessments that were payable before the foreclosure sale.

13.2. Mortgagee Approval. Notwithstanding anything in *Section 15.5* to the contrary, any amendments to the Declaration which materially amend or add to the provisions of this Declaration relating to: (i) voting, (ii) assessments, assessment liens, or the subordination of such liens, (iii) reserves for maintenance or the repair or replacement of Common Elements, (iv) insurance or fidelity bonds, (v) rights to use of the Common Elements, (vi) responsibility for repair and maintenance of the Planned Community, (vii) the expansion or contraction of, or the addition, annexation or withdrawal of property to or from, the Planned Community, or (viii) the boundaries of any Lot, shall require the written approval of not less than a Majority in Interest of the affected Eligible Mortgagees.

14. DEFAULTS/REMEDIES.

14.1. Default. Failure of the Association Board, or Owner, or Occupant to comply with the terms of the Planned Community Documents or any Rules & Regulations, as they may be amended from time to time, shall be a default and grounds for an action to recover sums due, damages and/or injunctive relief, by the Association Board (on behalf of the Association or one or more of the Owners) or by an Owner in its own behalf. In the case of flagrant or repeated violations by an Owner, that Owner may be required by the Association Board to give sufficient surety or sureties for its future compliance.

14.2. Remedies. In the event of any default in and/or breach of any of the terms, conditions and provisions of the Planned Community Documents or the Rules & Regulations (either actual or threatened) the aggrieved party shall have the right to specific performance and/or injunction in addition to any and all other rights and remedies at law or in equity. In any proceeding arising because of an alleged default by an Owner or by the Association Board, the prevailing party shall be entitled to recover the costs of the proceedings, including, but not limited to, reasonable attorneys' fees. The right and remedies provided by this Declaration are distinct and cumulative and the use of any one right or remedy by any party shall not preclude or waive its right to use any or all other remedies. No delay or omission of a party to exercise any right or power arising from another's default shall impair any such right or power, or shall be construed to be a waiver of any such default or an acquiescence therein. The rights and remedies provided in this Declaration are given in addition to any other rights the parties may have by law, statute, ordinance or otherwise.

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

15.2. Waiver. The Developer (during the Developer Control Period) and thereafter the Association or the Association Board shall have the right, in the exercise of their reasonable discretion, to waive one or more violations of the requirements of this Declaration. No waiver shall be effective unless in writing and nevertheless shall not operate as a waiver of any other requirement respecting the Lot in question or any other Lots subject to this Declaration. No waiver shall be effective if it shall cause the Lot or its Improvements to be in non-conformance with any applicable Law.

15.3. Enforcement. The Developer (during the Developer Control Period), the Association, or any Owner shall have the right to enforce, by a proceeding at law or in equity, the terms of the Declaration. Failure by the Developer, Association, or by any Owner to enforce any covenant or restriction herein shall in no event be deemed a waiver of the right to do so thereafter. The court may award the prevailing party its reasonable attorneys fees incurred in such enforcement action.

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

15.5. Amendment. Except as specifically otherwise provided in the Planned Community Documents, the Declaration may be amended by a vote of not less than sixty-seven percent (67%) of the Allocated Interests of all of the Lots. If an amendment is properly adopted, the Board shall, within thirty (30) days cause the amendment to be recorded with the County Registry. All amendments shall be effective from the date of recordation in the appropriate Register of Deeds. Notwithstanding the above provisions to the contrary, during the Developer Control Period, an amendment, to be effective, must also obtain the Developer's written approval. No amendment shall affect the use of a Lot which was approved pursuant to the terms of this Declaration prior to the effective date of the Amendment.

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

15.7. Voting. Voting by Members of the Association shall be in accordance with the applicable provisions set forth in the Bylaws.

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

15.9. Notice. All notices under this Declaration shall be in writing. Unless delivered personally, all notices shall either be delivered by a nationally recognized overnight express delivery service or be given by first class mail, postage prepaid, addressed to the addresses maintained pursuant to **Section 15.8** or, if none, to the address noted on the most recent Granville County tax records for the Owner of the Lot.

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

15.11. Owner Responsibility. Notwithstanding anything in this Declaration to the contrary, an Owner shall be responsible for any and all violations of this Declarations by its employees, agents, tenants, guests and invitees. When a party to this Declaration consists of more than on individual or entity, such party's liability shall be joint and several.

15.12. Construction. This Declaration shall be construed in accordance with the laws of North Carolina without giving effect to its conflict of laws principles.

15.13. Exhibits. All Exhibits and Schedules, if any, attached to this Declaration are incorporated by reference and made a part of this Declaration. The term "Declaration" as used in this document shall include all such Exhibits and Schedules.

15.14. Approval. This Declaration shall not be amended or terminated without the prior approval of the Zoning Entity. A failure to approve or disapprove the proposed amendment or termination within thirty (30) days after it has been submitted, in writing, to the Zoning Entity, Attn.: City Attorney's Office, shall be deemed to be an approval of the proposed amendment/termination.

15.15. Limited Liability. In no case shall the Zoning Entity be responsible for failing to provide any emergency or regular fire, police or other public service when such failure is due to lack of access to such areas due to inadequate design or construction, blocking of access routes, inadequate maintenance, or any other factor within the control of the Developer, the Association, Owners or Occupants. In no case shall the Zoning Entity or the State of North Carolina be responsible for maintaining any private street. Such responsibility shall rest with the Association and/or Owners.

IN WITNESS WHEREOF, the undersigned have executed, sealed and delivered this Declaration in the Company name on the date first above written.

DAVENPORT-GRANVILLE PROPERTIES, LLC,
a North Carolina limited liability company,

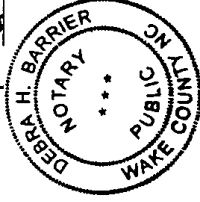
By: William Bradley Mullins
Name/Title: William Bradley Mullins, Manager

**NORTH CAROLINA
WAKE COUNTY**

I, the undersigned Notary Public in and for the aforesaid County and State, certify that William Bradley Mullins, a Manager of Davenport-Granville Properties, LLC, personally came before me this day and acknowledged the due execution of the foregoing instrument on behalf of and as the act of the company. Witness my hand and official seal this 13 day of June, 2005.

Debra H. Barrier
Notary Public

My Commission expires: 2-21-10



Book Page
1093 0830

EXHIBIT A
LEGAL DESCRIPTION

BEGINNING at an existing iron pipe located in the northern right-of-way of Elm Street (S.R.1724 - 60' ROW) marking both the southwestern corner of the sub ect property and the northeastern corner of that land now or formerly owned by Josephine B Hayes (Deed Book 168/Page 510), the Point of Beginning, thence along that common prop rty line N 53°06'04" W 1159.41' to an existing iron pipe and N 10°11'55" W 204.87' to an existing iron pipe, also being in the common property line of lands now or formerly owned by Paul Rogers (Deed Book 809N/Page 851); thence along that common property line the following courses and distances: (i) N 02°27'09" E 857.40' to an existing iron pipe; (ii) S 86°12'36" E 428.90' to an existing iron pipe; (iii) S 37°37'34" E 467.0' to an existing iron pipe; (iv) S 45°37'58" E 1158.08' to an axle; and (v) S 46°02'10" E 20.51' to an existing iron pipe, also being in the northern right-of-way of Elm Street; thence along that right-of-way the following courses and distances: (i) S 48°37'15" W 46.14' to a point; (ii) S 47°24'05" W 88.90' to a point; (iii) S 49°07'42" W 92.80' to a point; and (iv) S 50°18'32" W 596.13' to the Point of Beginning, being 34.7041 acres, more or less, according to that survey entitled "Boundary Survey of Property to be Acquired by DSM, Inc." prepared by Bass, Nixon & Kennedy, Inc., dated July 26, 2004, to which survey reference is made for greater certainty of description, and being the same property described in that Plat recorded at Map Book 19, Page 143, Granville County Registry.

GAUSER\Christian\DSM.Linc\Development\Project\Shared\Property\HDOA\RearCovr.wpd

STATE OF NORTH CAROLINA, GRANVILLE COUNTY.

The foregoing certificate of Debra H. Barrow, a Notary Public

is certified to be correct. This instrument was presented for registration and filed in this office in Book 1093
Page 806 This 27th day of June, 2005, at 10:14 o'clock AM.

Kathryn Annus Amwick Register of Deeds By Debra H. Barrow Deputy/Assistant

86