

Wake County, NC 615  
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**DECLARATION OF CONDOMINIUM  
FOR  
THE GARDENS ON GLENWOOD CONDOMINIUM**

**February 12, 2002**

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STATE OF NORTH CAROLINA

COUNTY OF WAKE

**DECLARATION OF CONDOMINIUM  
FOR THE GARDENS ON GLENWOOD  
CONDOMINIUM**

This Declaration of Condominium (this "Declaration") is made this 12<sup>th</sup> day of February, 2002, by **STERLING GLENWOOD VILLAGE, LLC**, a North Carolina limited liability company ("Declarant"), pursuant to the provisions of Chapter 47C of the North Carolina General Statutes, entitled the "North Carolina Condominium Act."

**STATEMENT OF PURPOSE**

Declarant is the owner of a parcel of real estate containing a total of approximately 7.3753 acres located at in Raleigh, Wake County, North Carolina, as more particularly described on Exhibit A attached hereto (the "Land"). Declarant has constructed on the Land one (1) building (the "Building"), containing a total of twenty-four (24) residential condominium units. Declarant has also constructed common amenities on the Land such as sidewalks, landscaped areas, gardens and other improvements. Declarant desires to submit the Land and the improvements located on the Land (collectively, the "Property") to the terms and provisions of the North Carolina Condominium Act.

Declarant also desires to reserve the right to construct the Condominium in phases, consisting of up to six (6) additional buildings, containing a total of up to seventy (70) additional residential condominium units on the Land. The maximum number of condominium units the Declarant reserves the right to create on the Land as described on Exhibit A, including the existing units, is ninety-four (94).

In addition, Declarant has deemed it desirable to create a nonprofit, incorporated owners' association which will be delegated and assigned powers of maintaining and administering the common areas and facilities on the Property, of administering and enforcing the covenants and restrictions created in this Declaration, and of levying, collecting and disbursing the assessments and charges created in this Declaration, and of taking any steps or performing any acts deemed necessary or appropriate to preserve the values of condominium units within the Property and to promote the recreation, health, safety and welfare of the unit owners. In order to accomplish the foregoing, Declarant is entering into this Declaration.

**NOW, THEREFORE**, Declarant hereby declares that all of the Property shall be held, transferred, sold, conveyed, occupied and used subject to the following covenants, conditions, easements, uses, limitations, obligations, and restrictions, all of which are declared and agreed to be in furtherance of a plan for the division of the Property into condominium units, and shall be deemed to run with the land to both burden and benefit Declarant, its successors and assigns, and any person or entity acquiring or owning an interest in the Property, and their successors, heirs and assigns.

ARTICLE I  
DEFINITIONS

Unless it is plainly evident from the context that a different meaning is intended, the following terms, words, and phrases shall have the following meanings when used in this Declaration.

Section 1.1    “Association” shall mean and refer to The Gardens on Glenwood Condominium Owners Association, Inc., a corporation organized and existing under the North Carolina Non-Profit Corporation Act pursuant to and in accordance with this Declaration, the Bylaws, and the North Carolina Condominium Act.

Section 1.2    “Buildings” shall mean and refer to the one (1) building located upon the Land, which contains a total of twenty-four (24) Units as well as any additional buildings that may be constructed on the Land by Declarant in accordance with its Development Rights.

Section 1.3    “Bylaws” shall mean and refer to the bylaws of the Association, a copy of which is attached hereto as Exhibit C, and all amendments to such bylaws which may from time to time be adopted.

Section 1.4    “Common Amenity Facilities” shall mean and refer to those certain fitness and business center, pool and pool house which may be constructed by the Declarant which shall be considered a Common Element of the Condominium. The exact location of the Common Amenity Facilities have not yet been determined. The Common Amenity Facilities, if constructed, shall be available to all Owners subject to reasonable rules and regulations as adopted by the Association. The Common Amenity Facilities NEED NOT BE BUILT.

Section 1.5    “Common Elements” shall mean and refer to all portions of the Condominium other than the Units, as depicted on the Plans, and as more particularly described in Section 5.1 of this Declaration.

Section 1.6    “Common Elements Interest” shall mean and refer to the undivided percentage interest in the Common Elements allocated to each Unit, as set forth on Exhibit B attached hereto. In the event that the Declarant elects to exercise its Development Right under Article VI of this Declaration to create additional Units, this Declaration shall be revised by a Supplementary Declaration as set forth under Article VI to provide for a new allocation of Common Elements Interests which shall substitute and replace Exhibit B attached hereto. The Common Elements Interests shall be used to allocate the division of proceeds, if any, resulting from any casualty loss or eminent domain proceedings, but shall not be used to determine voting rights in the Association, or each Unit’s share of Common Expenses, each of which shall be allocated equally among all Units.

Section 1.7    “Common Expenses” shall mean and refer to any and all expenditures made by or financial liabilities of the Association, together with any allocations to reserves,

pursuant to and in accordance with this Declaration, the Bylaws, and the North Carolina Condominium Act.

Section 1.8 “Condominium” shall mean and refer to The Gardens on Glenwood Condominium, as established by the submission of the Property to the terms of the North Carolina Condominium Act by this Declaration.

Section 1.9 “Condominium Documents” shall mean and refer to this Declaration, the Articles of Incorporation of the Association, the Bylaws, and the rules and regulations governing the use of the Property, as the foregoing may be amended and supplemented from time to time, and all attachments and exhibits thereto.

Section 1.10 “Declarant” shall mean and refer to Sterling Glenwood Village, LLC, a North Carolina limited liability company. Following recordation of a document transferring to another person or entity all or some of the Special Declarant Rights, pursuant to Section 7.2 of this Declaration, the term “Declarant” also shall mean and refer to that transferee.

Section 1.11 “Declarant Control Period” shall mean and refer to the period commencing on the date hereof and continuing until the earlier of (i) one hundred twenty (120) days after conveyance of seventy-five percent (75%) of the Units (including Units annexed by Supplemental Declarations) to an Owner other than Declarant; (ii) two (2) years after Declarant ceases to offer Units for sale in the ordinary course of business; (iii) two (2) years after any Development Right provided in Article VI was last exercised; or (iv) the date upon which Declarant voluntarily surrenders control of the Condominium to the Association.

Section 1.12 “Declaration” shall mean and refer to this Declaration of Condominium, as it may be amended from time to time in the future.

Section 1.13 “Development Rights” shall mean and refer to the rights preserved by Declarant in Article VI of this Declaration to create additional Units in accordance with the terms and conditions set forth in Article VI.

Section 1.14 “Executive Board” shall mean and refer to the governing body from time to time of the Association as constituted in accordance with the Articles of Incorporation of the Association, the Bylaws and the North Carolina Condominium Act.

Section 1.15 “Land” shall mean and refer to the real property subject to this Declaration, exclusive of any improvements located thereon or incorporated therein, which is more particularly described on Exhibit A attached hereto.

Section 1.16 “Limited Common Elements” shall mean and refer to those portions of the Common Elements allocated by this Declaration, or the terms of N.C. Gen. Stat. §47C-2-102(2) or (4), for the exclusive use and benefit of one or more, but fewer than all, of the Units, to the exclusion of all other Units, as more fully described in Section 4.2 of this Declaration, and as depicted on the Plans.

Section 1.17 “Mortgage” shall mean and refer to a mortgage or deed of trust constituting a first lien on a Unit.

Section 1.18 “Mortgagee” shall mean and refer to the owner and holder of a Mortgage that has notified the Association in writing of its name and address, and that it holds a Mortgage on a Unit. Such notice will be deemed to include a request that the Mortgagee be given the notices and other rights described in Article XVII.

Section 1.19 “North Carolina Condominium Act” shall mean and refer to Chapter 47C of the North Carolina General Statutes.

Section 1.20 “Owner” shall mean and refer to the record owner, whether one or more persons or entities, of fee simple title to any Unit but shall exclude those persons or entities having an interest in any Unit as merely security for the payment or performance of an obligation.

Section 1.21 “Plans” shall mean and refer to the surveys, plans and specifications of the Buildings and Property, prepared by John A. Edwards & Company and Womack & Hampton Architects, LLC and recorded under the name of the Condominium in the Unit Ownership File under the file number stamped or written on the first page of this Declaration in the Office of the Register of Deeds of Wake County, and any amendments or Supplements to those Plans that may be attached to the Supplementary Declaration required by Article VI of this Declaration if Declarant exercises its Development Rights to create additional Units. The Plans are hereby incorporated herein by reference as if the same were attached to this Declaration.

Section 1.22 “Property” shall mean and refer to the Land, the Buildings and all other improvements and structures located on the Land; and all easements, rights and appurtenances belonging or appertaining to the Land.

Section 1.23 “Special Declarant Rights” shall mean the rights reserved for the benefit of Declarant in the Condominium Documents, as more particularly described in Article VI of this Declaration.

Section 1.24 “Unit” shall mean and refer to a portion of the Property, as more particularly described in Article IV of this Declaration, that is the subject of individual ownership by an Owner.

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

ARTICLE II  
DESIGNATION OF CONDOMINIUM

Section 2.1 Location and Designation. The Land on which the Buildings and other improvements are located is located entirely in Wake County, North Carolina, contains approximately 7.3753 acres, and is more particularly described on Exhibit A attached hereto and incorporated herein by reference. The Land is subjected to the terms of the North Carolina Condominium Act by this Declaration.

Section 2.2 Name. The name of the Condominium is The Gardens on Glenwood Condominium.

ARTICLE III  
DESCRIPTION OF BUILDINGS

Section 3.1 Existing Buildings. The existing Building is a four (4) story concrete and steel frame building, with brick and stucco exteriors. Such existing Building contains one level of secured parking located on the ground level of the Building and also contains living areas on the second, third and fourth floors of the Building. The existing Building contains an aggregate of twenty-four (24) Units. The Buildings are more particularly described in the Plans, which show all particulars of each Building. The Plans contain a certification by John A. Edwards, Jr., a North Carolina Registered Land Surveyor, and Charles R. Womack, a North Carolina Licensed Architect, that the Plans contain all the information required by N.C. Gen. Stat. §47C-2-109.

Section 3.2 Potential New Buildings. As provided in Article VI, Declarant reserves Development Rights to construct up to six (6) additional Buildings containing an aggregate of up to seventy (70) additional Units on the Land. As provided in Section 6.2, any additional Buildings constructed by Declarant will be substantially identical in terms of appearance and quality of construction to the existing Buildings except that one of the remaining Buildings which may be built may contain a maximum of four (4) townhome Units having two-car garages and living areas on the first level of the Building and living areas on the second level of the Building. The Building containing the townhomes will be made of wood-frame constitution with brick and masonry exteriors. If Declarant exercises its Development Right to construct such additional Units on the Land, the Supplementary Declaration required by Section 6.3 of this Declaration shall contain a revised set of Plans which shall describe the new Buildings and contain certifications required by N.C. Gen. Stat. §47C-2-109.

ARTICLE IV  
DESCRIPTION OF UNITS

Section 4.1 Location of Buildings. The location and dimensions of the Building are shown on the Plans. If the Declarant exercises its Development Right to create additional Units and Limited Common Elements, the Amendment to this Declaration required by N.C. Gen. Stat. §47C-2-110 shall contain a revised set of Plans, which shall show the location of the new Buildings.

Section 4.2 Units. The location of Units within the existing Building and their dimensions are shown on the Plans. There are a total of twenty-four (24) Units in the existing Building. Pursuant to Article VI of this Declaration, Declarant reserves a Development Right to create up to an additional seventy (70) Units, so that the maximum number of Units that may be created by Declarant is ninety-four (94). The identifying number for each Unit is set forth on Exhibit B and on the Plans. If Declarant exercises its Development Right to create additional Units and Limited Common Elements, the Supplementary Declaration required by Section 6.3 of this Declaration shall contain a new Exhibit B and revised set of Plans, which shall contain new identifying numbers for the Units thereby created.

Section 4.3 Unit Boundaries. The boundaries of each Unit are as follows:

(a) Upper Boundary: The horizontal plane of the top surface of the wallboard in the ceilings within the Unit. As depicted on the Plans, the ceilings in certain portions of the Unit may be at different elevations; in such cases, the upper boundary of such Unit shall not be a single horizontal plane, but shall vary with the differing finished ceiling elevations within different portions of the Unit.

(b) Lower Boundary: The horizontal plane of the top surface of the subflooring within each Unit. As depicted on the Plans, the floor in certain portions of the Unit may be at different elevations; in such cases, the lower boundary of such Unit shall not be a single horizontal plane, but shall vary with the differing finished floor elevations within different portions of the Unit.

(c) Vertical Boundaries: The vertical planes which include the back surface of the wallboard of all walls bounding the Unit, extended to intersections with each other, and with the upper and lower boundaries.

As provided in N.C. Gen. Stat. §47C-2-102(1), all lath, flooring, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, finished flooring and any other materials constituting any part of the finished surfaces of the perimeter walls, floors, and ceilings are part of the Unit. Furthermore, all interior walls (except load bearing walls), partitions, fixtures, appliances, cabinets and other facilities or improvements lying completely within the boundaries of a Unit shall be a part of such Unit. As provided in N.C. Gen. Stat. §47C-2-102(2), if any chute, flue, duct, wire, pipe for water or sewer, conduit, load bearing wall, loan bearing column, or any other fixture lies partially within and partially outside the designated boundaries of a Unit, any portion thereof serving only that Unit shall be a Limited Common Element allocated to that Unit, as provided in Section 5.2 below, and any portion thereof serving more than one Unit, or any portion of the Common Elements, shall be a Common Element.

ARTICLE V  
COMMON ELEMENTS

Section 5.1 Common Elements. The Common Elements include all portions of the Condominium that are not part of the Units, including without limitation:

(a) The Land.

(b) All improvements located on the Land outside of the Buildings, including without limitation landscaped areas, surfaced parking areas, paved access roads, walkways, a dumpster pad and common trash receptacle, swimming pool, if built, gate house and garden area.

(c) All portions of the Buildings located outside of the Units, including without limitation the Limited Common Elements described in Section 5.2 below, as well as the elevators and interior common stairwells and corridors within the Buildings, the Common Amenity Facilities, if constructed, and the parking located beneath the Buildings.

(d) The foundations, roofs, columns, girders, beams, supports, exterior and interior load-bearing walls, floors within and between Units, and all other structural elements of the Buildings.

(e) Any public connections and meters, vaults, and manholes for utility services that are not owned by the public utility or municipal agency providing such services.

(f) All tangible personal property required for the operation and maintenance of the Condominium that may be owned by the Association.

Section 5.2 Limited Common Elements. The Limited Common Elements shall be composed of the following:

(a) Those portions of any chute, flue, duct, wire, pipe for water or sewer, conduit, bearing wall, bearing column, or any other fixture lying partially within and partially outside the designated boundaries of a Unit, but serving exclusively that Unit, which shall be Limited Common Elements allocated exclusively to that Unit.

(b) Any shutters, awnings, window boxes, porches, decks, balconies, patios, and all exterior doors and windows or other fixtures designed to serve a single Unit, but located outside that Unit's boundaries, which shall be Limited Common Elements allocated exclusively to that Unit.

(c) Any portions of the heating, ventilating, and air conditioning systems, including fans, compressors, return air grills and thermostats, whether located inside or located outside the designated boundaries of a Unit,

which shall be Limited Common Elements allocated exclusively to the Unit or Units that they serve.

(d) Those areas indicated as Limited Common Elements on the Plans, which shall be allocated to the Unit to which such Limited Common Elements are servicing, including but not limited to: (i) the front and back lawns immediately adjacent to each of the townhome Units, (ii) the attached storage area located in the attic space above the top level of each of the townhome Units, (iii) the paved driveways providing access to the garage within each townhome Unit from the access road, and (iv) a private balcony attached to certain Units as shown on the Plans.

(e) All Limited Common Elements not otherwise allocated to a specific Unit or specifically labeled as "Unallocated" on the Plans shall be deemed Limited Common Elements allocated to all Units within the Building serviced by such Limited Common Elements.

(f) Either one (1) or two (2) parking spaces located in the ground level, secured parking garage constructed as the first level of each of the Buildings shall be allocated to each Unit as a Limited Common Element of that Unit. Each of the Units designated as an "A-Unit" shall be allocated a minimum of one (1) reserved parking space. All other Units shall have two (2) reserved parking spaces allocated as a Limited Common Element of that Unit. In addition, each Unit shall be allocated a storage closet located either within the ground level parking garage constructed as a part of the Buildings or as a part of the balcony of such Unit, all as identified on the Plans. Each of the townhome Units shall have an attached two-car garage as a part of the Unit and therefore will not be allocated reserved parking or a storage closet as a Limited Common Element.

(g) All Limited Common Elements labeled on the Plans as "Unallocated" may be, during the Declarant Control Period, allocated by Declarant as a Limited Common Element to any Unit within the Condominium.

The cleanliness and orderliness of the Limited Common Elements (excluding the parking areas, the elevators and common corridors within the Buildings) shall be the responsibility of the individual Owner having the right to the use and enjoyment of such Limited Common Elements. Notwithstanding any other provisions of this Declaration, or any provision of the Bylaws or the North Carolina Condominium Act, the obligation for maintenance, repair, or replacement of any portions of the heating, ventilating, and air conditioning systems that are Limited Common Elements shall be the sole responsibility of the Owners of the Units to which such Limited Common Elements are allocated. References in this Declaration to "Common Elements" shall include Limited Common Elements unless the context clearly indicates otherwise. The allocation of use of Limited Common Elements to the Units as provided for in this Declaration shall not be altered without the unanimous consent of the Owners whose Units are affected. Notwithstanding anything contained herein

to the contrary, the Association shall have the right to contract with a landscape maintenance company to maintain all of the landscaping and lawns on the Land including, without limitation, the front and back lawns of each townhome Unit which are Limited Common Elements. Furthermore, the Association shall have the right to contract with a maintenance company to maintain the secured parking garages, the elevators and common corridors constructed as a part of each of the Buildings. The cost of such maintenance with regard to the landscaping, the parking garages and the interior elevators and common corridors shall be considered a Common Expense of the Association.

Section 5.3 Undivided Interests of Owners in Common Elements. The percentage interest in the Common Elements allocated to each Unit shall be the Common Elements Interest for that Unit as set forth on Exhibit B attached hereto. The Common Elements Interest allocated to each Unit shall not be changed except with the unanimous consent of all the Owners of all the Units and with the consent of all the Mortgagees, except as may be specifically authorized elsewhere in this Declaration. In particular, if Declarant exercises its Development Rights to create additional Units and Limited Common Elements, Declarant shall have the right to adjust the Common Elements Interest for each Unit in accordance with the following formula: The Common Elements Interest allocated to each Unit will be based on the gross square footage of that Unit, as shown on the Plans, and shall be calculated by dividing the gross square footage of that Unit by the total gross square footage of all Units, and by multiplying the quotient so calculated by one hundred (100). The Supplementary Declaration required by Section 6.3 of this Declaration shall contain a new allocation of Common Elements Interest calculated in accordance with the foregoing formula which shall be substituted for Exhibit B attached to this Declaration in the event that Declarant exercises this Development Right. For purposes of this calculation, gross square footage shall mean the Unit dimensions measured from exterior faces of exterior walls and to the center of common walls with other Units, excluding any Common or Limited Common Elements.

Section 5.4 Maintenance of Common Elements. The Association shall be responsible for the maintenance and repair of all Common Elements, except for the Limited Common Elements (excluding the parking garages, front and back yards of the townhome Units and the common elevators and corridors within each Building, all of which shall be maintained by the Association), and except for maintenance or repairs caused by the negligence or intentional misconduct of any Owner, his agents, invitees or family members, which shall be the responsibility of that Owner.

## ARTICLE VI DEVELOPMENT RIGHTS

Section 6.1. Creation of New Units and Limited Common Elements. Declarant reserves an option, until the eighth (8<sup>th</sup>) anniversary of the date of recording of this Declaration (i) to construct the Common Amenity Facilities and (ii) to create new Units and Limited Common Elements in accordance with the provisions of this Article VI. The maximum number of Units within the Condominium that Declarant reserves the right to create, including Units in existence as of the date of recording this Declaration is ninety-four (94). Declarant may exercise this Development Right within the eight (8) year period

specified above, without the consent or approval of the Association, or any other Owner or Mortgagee, by executing and recording a Supplemental Declaration in the manner provided in Section 6.3 below. If the Declarant exercises its Development Right to construct additional Units, the Declarant shall not be obligated to construct up to the maximum number of Units and Limited Common Elements as specified above but may create any number less than the maximum number specified above.

Section 6.2 Quality of Construction. Any new Building (other than the townhome Units) or Common Amenity Facilities constructed by Declarant shall be substantially similar in terms of architectural appearance and quality of construction to the existing Buildings. Declarant reserves the right to substitute materials of similar durability, quality and strength, so long as the foregoing standard is complied with. The Units within the new Buildings created by the Declarant need not be of the same type and design of the existing Units, so long as the construction and appearance of each Building satisfies the requirements set forth above. Declarant shall have the right to allocate Limited Common Elements to the new Units in the manner similar to the allocation of Limited Common Elements to the existing Units under Section 5.2 of this Declaration. Any other Common Elements constructed by Declarant, such as sidewalks and landscaped areas, shall be consistent with the Common Elements in the initial phase of the Condominium.

If any Building is constructed to contain townhome Units, the architectural appearance and quality of construction shall be substantially similar to the appearance and quality of construction of the existing Buildings, except that there will not be a secured parking level on the ground floor of such townhome Units. Instead, each townhome Unit will have an attached two-car garage located on the ground level of such Unit.

Section 6.3 Supplementary Declaration. In order to exercise any Development Right reserved under this Article VI, Declarant shall execute and record an amendment to this Declaration in accordance with N.C. Gen. Stat. § 47C-2-110 (a "Supplementary Declaration"). Any Supplementary Declaration executed and recorded by Declarant to exercise the Development Right of creating new Units or Limited Common Element shall contain an amendment or supplement to the Plans identifying the new Units and Limited Common Elements so created, as well as in an amendment to Exhibit B attached to this Declaration, assigning and identifying numbers to each new Unit and reallocating the Common Elements Interests among all Units in accordance with the formula set forth in Section 5.3 of this Declaration. Any such Supplementary Declaration also may contain such additions to the provisions of this Declaration as may be necessary to reflect the different character of the new Units created by Declarant, so long as such additions are not inconsistent with the overall scheme of the Declaration, and provided that such additions shall not apply to any Unit created prior to recordation of the Supplementary Declaration or to the Owner or Mortgagee of any such Unit.

## ARTICLE VII

### SPECIAL DECLARANT RIGHTS

Section 7.1 Special Declarant Rights. Special Declarant Rights are those rights reserved for the benefit of Declarant in the Condominium Documents, and shall include without limitation the following rights:

- (a) The right to complete any improvements shown on the Plans.
- (b) The right to maintain sales offices, model units and signs advertising the Condominium.
- (c) The right to use easements through the Common Elements for the purpose of completing construction.
- (d) The right to appoint or remove officers of the Association or members of the Executive Board during the Declarant Control Period.
- (e) The right to exercise any other rights granted to or reserved by Declarant in the Condominium Documents expressly including, without limitation, the Development Rights set forth in Section 6.1 above.

Section 7.2 Transfer of Special Declarant Rights. Declarant may transfer any Special Declarant Rights created or reserved under the Condominium Documents to any person or entity, by an instrument evidencing the transfer duly recorded in the Office of the Register of Deeds for Wake County. The instrument shall not be effective unless it is executed by the transferor and the transferee. Upon the transfer of any Special Declarant Rights, the liability of the transferor and the transferee shall be as set forth in N.C. Gen. Stat. §47C-3 -104.

## ARTICLE VIII RESTRICTIONS ON USE

Section 8.1 Residential Use. All Units shall be used for residential purposes only. Notwithstanding the foregoing, Declarant may maintain any Unit owned by Declarant as a sales office or model Unit.

Section 8.2 Nuisance. No obnoxious, offensive or unlawful activity shall be conducted within any Unit, or on or about the Common Elements, nor shall anything be done thereon or therein which may be or which may become an annoyance or nuisance to the other Owners, or endanger the health and safety of any Owner. Nothing shall be done or kept in any Unit or in the Common Elements that will result in the termination of, or an increase in the premium for, the policy of property insurance for the Property.

Section 8.3 Prohibitions on Use of Common Elements. The Common Elements (other than storage areas, if any, designated by the Association) shall not be used for the storage of personal property of any kind. Stairs, entrances, lobbies, hallways, sidewalks, yards, driveways, and parking areas shall not be obstructed in any way, or used for other than their intended purposes. In general, no activity shall be carried on nor conditions maintained

by any Owner either in his Unit or upon the Common Elements which detracts from the appearance of the Property.

Section 8.4 Garbage. Trash, garbage and other waste shall be kept in sanitary containers within each Unit, and deposited only in the common trash receptacles located within the Common Elements.

Section 8.5 Parking. No Owner or any employee, agent, or invitee of any Owner, shall park, store or keep any vehicle on the Property except wholly within those portions of the Common Elements designated as parking areas by the Association or in the garage associated with each townhome Unit, and in particular shall not block any entrances, drive aisles, and fire lanes. The paved driveway providing access to each townhome Unit may be used only by the Owner of the Unit to which that driveway is allocated as a Limited Common Element, and his agents and invitees. Parking spaces allocated to each Unit may be used only by the Owner of the Unit to which the parking spaces are allocated as a Limited Common Element, and his agent and invitees. No boat, boat trailer, motor home, travel trailer, camper or other recreational vehicle may be stored on the Property at any time. No significant automobile repair shall be allowed in the parking areas on the Property. The Association shall have the right to tow any vehicle in violation of this Section 8.5 at its owner's expense. Other than the specific parking spaces allocated to the Units as Limited Common Elements, the remaining parking spaces available on the Property shall be Common Elements available for use of all Owners, their family members, guests and invitees on a "first-come, first-served" basis.

Specifically, but not way of limitation, the Association shall have the right, and so intends, to post "No Parking" signs in certain areas of the Property including any and all bridges as well as alleyways. In addition to having the right to tow any vehicle in violation of the "No Parking" restriction, the Association shall have the right to levy fines as follows: First Offense during any twelve (12) month period - \$50.00; Second Offense during any twelve (12) month period - \$100.00; any violations over two (2) in any twelve (12) month period - \$200.00. Fines imposed for violation of the parking restrictions shall be considered special assessments and shall be due and payable upon receipt of the parking violation. The Association shall have the right to enforce payment of such special assessment in the same manner as it may enforce the collection of any assessments under this Declaration and the Bylaws of the Association including charging of interest, payment of late fees and imposing of a lien against the Unit. Each Owner shall be responsible for violation of the "No Parking" restriction by Owner or anyone in Owner's family or any guests or invitee of the Owner.

Section 8.6 Leases of Units. Any lease of a Unit or portion thereof shall be in writing and shall provide that the terms of the lease shall be subject in all respects to the Condominium Documents and that any failure by the lessee to comply with all of the terms of such Condominium Documents shall constitute a default under the lease. No Unit may be leased for a period shorter than six (6) months.

Section 8.7 No Timeshares. No interest in any Unit may be subjected to a time share program, as that term is defined in N.C. Gen. Stat. §93A-41(10).

Section 8.8 Animals. No animals, livestock, or poultry of any kind shall be kept or maintained on the Property or in any dwelling located thereon except that small common household pets may be kept or maintained in each Unit, provided they are not kept or maintained for commercial purposes and provided that no Owner may have more than two (2) such pets at any one time (excluding fish). No pet shall be permitted upon the Common Elements unless carried or leashed by a person that can control the pet. All pets shall be controlled so as not to create a nuisance or unreasonable disturbance (including loud and excessive barking) on the Property. Pets shall not be permitted to defecate in the Common Elements, and each Owner shall clean up immediately after his pet if an accident occurs. All pets shall be registered or inoculated as required by law. Each Owner shall hold the Association harmless from any claim resulting from any action of his pet, and shall repair at his expense any damage to the Common Elements caused by his pet. If any Owner violates these rules more than twice in any twelve (12) month period, then in addition to any fines provided in the Bylaws, the Association shall have the right to require the Owner to remove the pet permanently from the Property upon not less than ten (10) days' written notice

Section 8.9 Utilities. Total electrical usage in any Unit shall not exceed the capacity of the circuits for that Unit as labeled on the circuit breaker boxes, and no electrical device causing overloading of the standard circuits may be used in any Unit without permission of the Association. All clothes dryers will have lint filters, and all stove hoods will have grease screens, and such screens and filters shall be used at all times and kept clean, and in good order and repair, by the Owner of the Unit in which they are located.

Section 8.10 Floor Load. There shall be no floor load in any Unit in excess of forty (40) pounds per square feet, unless an engineering determination of the floor load capacity in the area of heavy use is approved by the Association.

Section 8.11 Windows. No curtains or draperies shall be installed or hung in any window of any Unit unless they have a white lining or backing on the side exposed to the window. No storm windows shall be installed in any Unit.

Section 8.12 Architectural Control. No building, landscaping, fence, wall or other structure (other than a satellite dish or antenna permitted by Section 8.16) shall be commenced, erected or maintained upon the Property, nor shall any exterior addition to or change or alteration to either the Unit or the Common Elements be made, until the plans and specification showing the nature, kind, shape, height, materials and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Association.

Section 8.13 Signs and Flags. No signs or other advertising devices shall be displayed on or about the exterior of any Unit, or in the Common Elements, except for a name plate or sign not exceeding twenty-four (24) square inches in area on the main door to each Unit. Notwithstanding the foregoing, Declarant shall have the right to maintain upon the Property advertising signs during the Declarant Control Period, provided those signs comply with applicable governmental regulations. Further, no pole or other device for the display of decorative flags shall be erected or displayed on or about the exterior of any Unit, or in the Common Elements unless approved in advance by the Association. In the event that the

Association approves installation of a pole or device for the display of decorative flags, any such flags displayed by an Owner shall be in good taste and shall not contain lewd or offensive displays or material.

Section 8.14 Maintenance. The Owner of each Unit is responsible for maintaining his Unit as well as the Limited Common Elements appurtenant thereto. Each Owner shall keep his respective Unit and its appurtenant Limited Common Elements in a clean, neat and orderly condition and in a good state of maintenance and repair. If an Owner fails to comply with the standards or requirements of the Association relative thereto, the Association shall assess the defaulting Owner the cost thereof and shall undertake to effect said compliance.

Section 8.15 Rules and Regulations. In addition to the use restrictions set forth in this Declaration, reasonable rules and regulations governing the use of the Property may be made and amended from time to time by the Association. Copies of such regulations and amendments thereto shall be posted prominently prior to their effective date, and shall be furnished by the Association to all Owners upon request. Specifically, and not by way of limitation, the Association shall have the right to make reasonable rules and regulations governing the use of the ground floor parking garage in each Building, the elevators, lobby, common corridors of each Building and access to the roof of each Building. No Owner shall be entitled to penetrate the roof of any Building without first providing detailed plans and specifications for the reason of any such penetration to the Association and obtaining prior written approval from the Association.

Section 8.16 Satellite Dishes and Antennas. Unless otherwise required by law, no exterior satellite dish in excess of one meter in diameter may be placed on the exterior of any Unit or in the Common Elements without the prior written approval of the Executive Board, which may be withheld in its sole discretion. The location of any exterior television antenna, or satellite dish less than one meter in diameter, shall be subject to the reasonable prior approval of the Executive Board, taking into account the appropriate standards set forth in the regulations of the Federal Communications Commission, and to the extent reasonably practical, the Executive Board may require that such antenna or satellite dish be screened from public view. Prior to installing the antenna or satellite dish, the Owner shall furnish to the Executive Board a copy of his installation plans. The Association shall have the right to perform any portion of the installation work at the expense of the Owner, or to require that any portion of the work be performed by contractors designated by the Executive Board. In no event shall such antenna or satellite dish be installed on the roof unless required by law or otherwise approved by the Executive Board in its sole discretion, and then, any roof penetration that is required to install any antenna or satellite dish shall be performed only by the roofing contractor designated by the Executive Board. The Owner shall also be responsible for any damage caused by the removal of the antenna or satellite dish, including the sealing of conduits or other roof penetrations. Any Owner installing an antenna or satellite dish under this Section 8.16 shall indemnify, defend and hold the Association harmless from and against any loss, damage, claim or other liability resulting from the installation, maintenance, repair, use and/or removal of the antenna or satellite dish, including any damage to the roof of the Building or other property damage caused by roof leaks.

Section 8.17 Balconies. The balconies adjacent to each Unit shall be kept in a clean, neat, and orderly condition at all times, and shall not be used for the overnight storage of garbage, or for the drying of laundry. In particular, towels or banners shall not be hung on the balcony railings, and any dead plants shall be removed promptly. No indoor-outdoor carpeting, hot tub, or other pool shall be installed on any balcony or patio area. If permitted by applicable building codes and zoning ordinances, an Owner may use or store a cooking grill on his balcony or patio area, but such Owner shall be responsible for complying with all applicable laws, ordinances, and regulations in connection with such storage and use.

## ARTICLE IX THE ASSOCIATION

Section 9.1 Organization of Association. A nonprofit North Carolina corporation known and designated as The Gardens on Glenwood Condominium Owners Association, Inc. (the "Association") has been organized to provide for the administration of the Property, and the Association shall administer the operation and maintenance of the Property and undertake and perform all acts and duties incident thereto in accordance with the terms of its Articles of Incorporation, the Bylaws, and the North Carolina Condominium Act. A true copy of the Bylaws of the Association is attached hereto as Exhibit C. Every Owner shall be required to be and shall automatically be a member of the Association by virtue of his ownership interest in a Unit.

Section 9.2 Powers; Lien for Assessment. In the administration of the operation and management of the Property, the Association shall have and it is hereby granted the authority and power to enforce the provisions of this Declaration, to levy and collect assessments in the manner provided in Article XI below and in Section 8 of the Bylaws, and adopt, promulgate and enforce such rules and regulations governing the use of the Units and Common Elements as the Association may deem to be in the best interest of the Owners in accordance with the Bylaws. Any sum assessed by the Association remaining unpaid for a period of thirty (30) days or longer shall constitute a lien on the Unit with respect to which such sum was assessed upon filing in accordance with N.C. Gen. Stat. §47C-3-116, and shall be enforceable by the Association in accordance with N.C. Gen. Stat. §47C-3-116 and Section 8 of the Bylaws.

Section 9.3 Declarant Control Period. During the Declarant Control Period, Declarant reserves the right to appoint and remove any Executive Board members; provided, however, (i) that not later than 60 days after conveyance of twenty-five percent (25%) of the Units to Owners other than Declarant, at least one member and not less than twenty-five percent (25%) of the members of the Executive Board shall be elected by Owners other than Declarant; and (ii) that not later than 60 days after conveyance of fifty percent (50%) of the Units to Owners other than Declarant, not less than thirty-three percent (33%) of the members of the Executive Board shall be elected by Owners other than Declarant.

Section 9.4 Books and Records. The Association shall maintain current copies of (a) the Condominium Documents, as they may be amended from time to time, (b) any rules and regulations adopted under Section 8.15 from time to time; and (c) all financial records of

the Association, as required by N.C. Gen. Stat. §47C-3-118. These items shall be available for inspection, during normal business hours and upon reasonable advance notice, by any Owner, any Mortgagee, and any insurer or guarantor of a loan secured by a Mortgage.

## ARTICLE X EASEMENTS AND PROPERTY RIGHTS

Section 10.1 Access by the Association. The Association, or any person authorized by it, shall have the right of access to each Unit and to the Limited Common Elements to the extent necessary for performance by the Association of its obligations of maintenance, repair, or replacement of the Property.

Section 10.2 Encroachment Easements. If any portion of the Common Elements now encroaches upon any Unit, or if any Unit now encroaches upon any other Unit or upon any portion of the Common Elements, or if such encroachment shall occur hereafter as a result of the settling or shifting of any Building, there shall exist a valid easement for the encroachment and for the maintenance of same for so long as such Building shall stand. If any Building, any Unit, or any portion of the Common Elements is partially or totally destroyed by fire or other casualty or as a result of condemnation or eminent domain proceedings, and subsequently is rebuilt, any encroachment of parts of the Common Elements upon any Unit, or of parts of any Unit upon the Common Elements, due to such rebuilding shall be permitted, and valid easements for such encroachments and the maintenance thereof shall exist so long as the Buildings shall stand.

Section 10.3 Easements over Common Elements. Declarant, during the Declarant Control Period, and the Association, at any time, may grant easements for utility purposes for the benefit of the Property, including the right to install, lay, maintain, repair and replace water lines; pipes; ducts; sewer lines; and water lines; gas mains; telephone and television or cable television wires, cables and equipment; electrical conduits; fiber optic lines; and other wires over, under, along and on any portion of the Common Elements; and each Owner hereby grants to Declarant or the Association, as applicable, an irrevocable power of attorney to execute, acknowledge and record for and in the name of each Owner such instruments as may be necessary to effectuate the foregoing. During the Declarant Control Period, Declarant shall have an easement over the Common Elements as may be reasonably necessary to complete the construction of the Buildings and the other improvements within the Property.

Section 10.4 Emergency Access. In case of any emergency originating in or threatening any Unit or the Common Elements, regardless of whether the Owner is present at the time of such emergency, the Association, or any other person authorized by it, shall have the right to enter any Unit or its Limited Common Elements for the purpose of remedying or abating the cause of such emergency and making any other necessary repairs not performed by the Owners, and such right of entry shall be immediate.

Notwithstanding anything in this Declaration to the contrary, each Owner, by acquisition of its Unit, acknowledges that all streets and roadways located within the Property shall be private streets and shall not be maintained by the City of Raleigh or any

governmental entity. The following disclosure is made in accordance with the Raleigh City Code §10-3074(b):

In no case shall the City be responsible for failing to provide any emergency or regular fire, police or other public service to any condominium development or their occupants 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, homeowner's association or occupants.

In no case shall the City or the State be responsible for maintaining any private street. Such responsibility shall rest with the homeowner's association and occupants in that such private streets will not be constructed to the minimum standards sufficient to allow their inclusion for public maintenance.

Declarant hereby reserves for the City and its emergency personnel, the right, without liability, to enter into the Property when emergency personnel reasonably believe that doing so is urgently necessary to save life, prevent serious bodily harm, put out a fire or to avert or control a public catastrophe.

Section 10.5 Relocation of Boundaries; Subdivision; Partitioning.

(a) Relocation of Boundaries Between Adjoining Units. The boundaries between adjoining Units may be relocated upon application to the Association by the Owners of such adjoining Units ("Adjoining Owners") and upon approval by the Association of such application; provided, however, that no such relocation of boundaries shall be binding upon any Mortgagee holding a Mortgage on any Unit whose boundaries are relocated, unless consented to in writing by such Mortgagee. Any such application to the Association must be in such form and contain such information as may be reasonably required by the Association, and shall be accompanied by, a plat detailing the proposed relocation of boundaries. Unless the Association determines within thirty (30) days after submission to it of the application that the proposed relocation of boundaries is unreasonable, the application shall be deemed approved. Any relocation of boundaries shall not affect the interests in the Common Elements allocated to each Unit. Upon approval of the proposed relocation of boundaries, the Association shall cause to be prepared and filed, at the Adjoining Owners' expense, an amendment to this Declaration and a plat which identifies the Units involved, describes and depicts the altered boundaries, and gives the dimensions of the altered Units. Such amendment shall also contain operative words of conveyance and be signed by the Adjoining Owners and consented to by their Mortgagees, if any, and shall be indexed by the Register of Deeds in the names of the Adjoining Owners.

(b) Subdivision of Units. No Unit may be subdivided.

(c) Partitioning. The interests in the Common Elements allocated to each Unit shall not be conveyed, devised, encumbered, partitioned or otherwise dealt with separately

from said Unit, and the interests in the Common Elements allocated to each Unit shall be deemed conveyed, devised, encumbered or otherwise included with the Unit even though such interests are not expressly mentioned or described in the instrument conveying, devising, encumbering or otherwise dealing with such Unit. Any conveyance, mortgage or other instrument which purports to grant any right, interest or lien in, to or upon the Unit, shall be null, void and of no effect insofar as the same purports to affect any interest in a Unit's allocated interests in the Common Elements unless the same purports to convey, devise, encumber or otherwise deal with the entire Unit. Any instrument conveying, devising, encumbering or otherwise dealing with any Unit, which describes said Unit by the identifying number assigned thereto on the Plans and herein without limitation or exception shall be deemed and construed to affect the entire Unit and its allocated interest in the Common Elements. Nothing herein contained shall be construed as limiting or preventing ownership of any Unit and its allocated interest in the Common Elements by more than one person or entity as tenants in common, joint tenants, or as tenants by the entirety or any other form permitted by law.

Section 10.6 Conveyance or Encumbrance of Common Elements. While the Property remains subject to this Declaration and to the provisions of the North Carolina Condominium Act, no conveyances of or security interests or liens of any nature shall arise or be created against the Common Elements without the prior written consent of at least eighty percent (80%) of all Owners, including at least eighty percent (80%) of all Owners other than Declarant, and at least eighty percent (80%) of all Mortgagees. Every agreement for the performance of labor or the furnishing of materials to the Common Elements, whether oral or in writing, must provide that it is subject to the provisions of this Declaration and that the right to file a mechanic's lien or other similar lien by reason of labor performed or material furnished is subordinated to this Declaration and to the lien of assessments for Common Expenses provided for in Section 9.2 of this Declaration. Nothing in this Section 10.6 shall be construed to limit the right of any Owner to convey or to encumber his allocated interest in the Common Elements as an appurtenance to and in connection with the conveyance or mortgaging of his Unit.

Section 10.7 Nature of Interest in Unit. Every Unit, together with its allocated interest in the Common Elements, shall for all purposes be and it is hereby declared to be and to constitute a separate parcel of real property. The Owner of each Unit shall be entitled to the exclusive fee simple ownership and possession of his Unit subject only to the covenants, conditions, restrictions, easements, uses, limitations, obligations, rules and regulations set forth in the Condominium Documents, or adopted by the Executive Board of the Association.

## ARTICLE XI ASSESSMENTS

Section 11.1 Taxes. Every Unit, together with its allocated interest in the Common Elements, shall be separately assessed and taxed by each assessing authority for all types of taxes authorized by law. Each Owner shall be liable solely for the amount taxed against his individual Unit, provided, however, the Units will not be separately assessed until calendar year 2002 with respect to Wake County ad valorem property taxes, and any such taxes for

calendar year 2001 shall be paid by Declarant (subject to reimbursement from each Owner for its pro rata share at closing).

Section 11.2 Common Expenses. Except as otherwise provided in this Declaration or in the Bylaws, each Owner shall contribute an equal percentage share of the Common Expenses, all in accordance with the definition of "Common Expenses" set forth in Section 1.6 above, the Bylaws and the provisions of the North Carolina Condominium Act. Based on the initial number of twenty-four (24) Units, each Owner's percentage share of Common Expenses is 4.167%; if Declarant expands the Condominium to ninety-four (94) Units in accordance with Article VI of this Declaration, each Owner's percentage share of Common Expenses will be 1.064%. Assessments for all Units shall begin as of the date the Declarant notifies all Owners, in writing, that Assessments shall commence which shall be not earlier than the date of the first conveyance of a Unit to a party other than Declarant and not later than April 1, 2002. Due dates for payment of such Common Expenses shall be established by the Association and shall be collected at least quarterly and may be collected monthly. Until such time as Assessments are commenced, Declarant shall pay all of the Common Expenses of the Association. Furthermore, notwithstanding when Assessments are commenced, for calendar year 2002, Declarant agrees to pay any excess of Common Expenses of the Association over the amount of Assessments collected from Owners. Monthly Assessments per Unit shall not exceed \$207.00 per month during 2002.

Section 11.3 Common Surplus. The term "Common Surplus" means and refers to all funds and other assets of the Association, including excess of receipts of the Association from assessments, rents, profits and revenues from whatever source, over the amount of Common Expenses. The Common Surplus shall be owned by the Owners in equal shares, based upon the total number of Units in the Condominium from time to time; provided, however, that the Common Surplus shall be held by the Association in the manner and subject to the terms, provisions and conditions of this Declaration imposing certain limitations and restrictions upon the use and distribution thereof. Except for distribution of any insurance proceeds, which shall be made in the manner provided in Section 12.6, or upon termination of the Condominium, any attribution or distribution of Common Surplus which may be made from time to time shall be made to the then Owners in equal shares, based upon the total number of Units in the Condominium at that time.

## ARTICLE XII INSURANCE

Section 12.1 Property Insurance. The Association shall obtain and maintain at all times a policy of property insurance on the Buildings (ISO special form or its equivalent) in an amount not less than one hundred percent (100%) of the replacement cost of the Buildings at the time such insurance is purchased and at the time of each renewal thereof (excluding the cost of foundations and footings, and the cost of any personal property supplied or installed by Owners), with a commercially reasonable deductible not in excess of \$10,000.00. The policy shall be issued by an insurance company properly licensed to do business in the State of North Carolina, with a general policyholder's rating of at least "A-" in the most recent edition of the Best's Key Rating Guide. The policy shall provide that each Owner is an

insured person with respect to his Unit and his allocated interest in the Common Elements. The policy shall contain an inflation guard endorsement, if available, and a construction code endorsement, if available, as well as a special condominium endorsement providing as follows: for waiver of subrogation against any Owner, and any Owner's employees or agents; that it may not be canceled or substantially modified without at least thirty (30) days' prior written notice to the Association and all insureds, including all Owners and Mortgagees; that no act or omission by any Owner will preclude recovery upon such policy; and that if, at the time of a loss under the policy, there is other insurance in the name of an Owner covering the same risk covered by the policy, the Association's policy provides primary insurance. Each property insurance policy shall provide that adjustment of loss shall be made by the Association as insurance trustee. Each property insurance policy shall provide for the issuance of certificates or mortgagee endorsements to Mortgagees.

Section 12.2 Liability Insurance. The Association shall obtain and maintain a policy of commercial general liability insurance (current ISO form or its equivalent) in such limits as the Executive Board may, from time to time, determine, covering each member of the Executive Board, the managing agent, if any, and each Owner with respect to liability arising out of the use, ownership, maintenance, or repair of the Common Elements; provided, however, that in no event shall the limits of such policy ever be less than \$1,000,000.00 per occurrence. The liability insurance policy shall include endorsements covering cross liability claims of one insured against another, including the liability of the Owners as a group to a single Owner, and shall provide that it may not be canceled or substantially modified without at least thirty (30) days' prior written notice to the Association and to all insureds, including all Owners and Mortgagees. The Executive Board shall review such limits annually.

Section 12.3 Fidelity Coverage. The Association may obtain such fidelity coverage against dishonest acts on the part of all persons responsible for handling funds belonging to or administered by the Association as it may deem necessary. Any such fidelity insurance policy must name the Association as the named insured and shall be written in an amount as may be determined by the Executive Board, but in no event less than one-half the annual budgeted amount of Common Expenses, or the amount required by any Mortgagee, whichever is greater.

Section 12.4 Other Insurance Policies. The Association shall be authorized to obtain such other insurance coverage, including worker's compensation or employee liability insurance, as the Association shall determine from time to time desirable or necessary.

Section 12.5 Premiums. Premiums upon insurance policies purchased by the Association, and any amounts paid as a result of a deductible, shall be paid by the Association and charged as a Common Expense.

Notwithstanding the preceding sentence to the contrary, in the event that a casualty occurs wholly within the boundaries of a Unit and does not affect any other Units or Common Elements, the Owner of such Unit shall be wholly responsible for any deductible amount in such policy of insurance relating to such claims.

Section 12.6 Distribution of Insurance Proceeds. All insurance policies procured by the Association shall provide that all losses shall be adjusted with and all proceeds shall be payable to the Association as insurance trustee. The sole duty of the Association as insurance trustee shall be to receive such proceeds as are paid and to hold the same in trust for the purposes set forth herein and for the benefit of the Owners and their Mortgagees in the following shares:

(a) Proceeds on account of damage to the Common Elements' shall be held in undivided shares for each Owner and his Mortgagee, if any, each Owner's share to be the same as such Owner's allocated Common Elements Interest.

(b) Proceeds on account of damage to Units shall be held in the following undivided shares:

(1) When the damage is to be restored, for the Owners of damaged Units in proportion to the cost of repairing the damage to each such Owner's Unit, which cost shall be determined by the Association.

(2) When the damage is not to be restored, an undivided share for each Owner, such share being the same as each such Owner's allocated Common Elements Interest.

(c) In the event a mortgagee endorsement or certificate has been issued with respect to a Unit, the share of the Owner shall be held in trust for the Mortgagee and the Owner as their respective interests may appear.

(d) Proceeds of insurance policies received by the Association as insurance trustee shall be distributed to or for the benefit of the Owners in the following manner:

(1) If it is determined, as provided in Article XIII below, that the damaged property with respect to which the proceeds are paid shall not be reconstructed or repaired,

(a) the proceeds attributable to the damaged Common Elements shall be used to restore the damaged area to a condition compatible with the rest of the Condominium;

(b) the insurance proceeds attributable to Units and Limited Common Elements which are not rebuilt shall be distributed to the owners of these Units and Units to which those Limited Common Elements were allocated or to their Mortgagees, in proportion to their respective Common Elements Interests; and

(c) the remainder of the proceeds shall be distributed to all Owners or Mortgagees, as their interests may appear, in proportion to their respective Common Elements Interests.

(2) If the damage for which the proceeds were paid is to be repaired or reconstructed, the proceeds shall be paid to defray the costs thereof. Any proceeds remaining after payment of such repair costs shall be distributed to the beneficial Owners and their Mortgagees, if any, jointly.

Section 12.7 Insurance Obtained by Owners. Each Owner shall obtain and keep continuously in force additional fire and casualty and extended coverage insurance upon his personal property, public liability insurance, and such other insurance coverage as he may desire. Each Owner shall obtain and maintain public liability insurance coverage in the amount of at least \$100,000.00 for bodily injury, including deaths of persons and property damage, arising out of a single occurrence. Each Owner shall file a copy of each such individual policy with the Association within thirty (30) days after purchase and shall provide, upon renewal, evidence of such renewal.

### ARTICLE XIII DUTY TO REPAIR OR RECONSTRUCT

Section 13.1 Reconstruction and Repair. In the event of damage to or destruction of any Building as a result of fire or other casualty, the Association shall arrange for the prompt restoration and replacement of the damaged or destroyed Building unless (1) the Condominium is terminated in accordance with the provisions of Article XVI below, or (2) repair or replacement would be illegal under any state or local health or safety statute or ordinance, or (3) the Owners decide not to rebuild by an eighty percent (80%) vote, including one hundred percent (100%) of Owners of Units not to be rebuilt and one hundred percent (100%) of Owners of Units to which are assigned Limited Common Elements not to be rebuilt. Unless one of the preceding three conditions occurs, the Association shall arrange for the prompt repair and restoration of the damaged or destroyed Building, not including any decoration or covering for walls, ceilings, or floors, or furniture, furnishings, fixtures or equipment (unless the subject insurance policy covers a portion or all of such loss, in which event the Association shall repair or replace such damaged property), and the Association shall disburse the proceeds of all insurance policies to the contractors engaged in such repair and restoration in appropriate progress payments and in accordance with the provisions of Section 12.6(d)(2) of this Declaration. Any payment for repair and restoration in excess of the insurance proceeds shall constitute a Common Expense. Any reconstruction or repair shall be in accordance with the Plans. If the Owners vote not to rebuild any Unit, that Unit's allocated Common Elements Interests shall be automatically reallocated upon the vote as if the Unit had been condemned under N.C. Gen. Stat. §47C-1-107(a).

Section 13.2 Obligations of Owners. Each Owner will, at his sole cost and expense, keep and maintain his Unit in good order and repair in accordance with the Plans, and will

make no structural addition, alteration or improvement to his Unit without the prior written consent of the Association, except as specifically permitted by this Declaration or authorized under N.C. Gen. Stat. §47C-2-111. Upon the failure of an Owner to so maintain his Unit, the Association shall be authorized to maintain, repair or restore such Unit, and the cost thereof shall be charged to such Owner and constitute a lien on the Unit until paid.

ARTICLE XIV  
UNITS SUBJECT TO CONDOMINIUM DOCUMENTS

All present and future Owners, tenants, and occupants of the Units shall be subject to and shall comply with the provisions of this Declaration, the Bylaws, and any rules and regulations as may be adopted in accordance with the Bylaws, as all of the foregoing may be amended and supplemented from time to time. The acceptance of a deed of conveyance or the entering into of a lease or the entering into occupancy of any Unit shall constitute an agreement that the provisions of this Declaration, the Bylaws and any rules and regulations which may be adopted are accepted and ratified by such Owner, tenant or occupant, and an agreement that such provisions shall be deemed and taken to be covenants running with the Land and shall bind any person having at any time any interest or estate in such Unit as though such provisions were made a part of each and every deed of conveyance or lease.

ARTICLE XV  
AMENDMENT TO AND SUPPLEMENT OF DECLARATION

Except in cases of amendments that may be permitted by N.C. Gen. Stat. §§47C-1-107, 47C-2-112(a) or 47C-2-108(b) or as is otherwise specifically authorized herein, this Declaration may be amended only by the vote of not less than sixty-seven percent (67%) of the Owners of Units, and not less than fifty-one percent (51%) of the Mortgagees, cast in person or by proxy at a meeting duly held in accordance with the provisions of the Bylaws. Except to the extent expressly permitted by the other provisions of this Declaration, any amendment which amends or alters the Common Elements Interest of any Unit, increases the number of Units, changes the boundaries of any Unit, changes the use to which any Unit is restricted, or modifies the terms of this Article XV, shall require the written approval of all Owners, together with the consent of all their respective Mortgagees. No amendment to the Declaration shall be effective until executed on behalf of the Association by any officer designated for that purpose and recorded in the office of the Register of Deeds of Wake County, North Carolina. No amendment to this Declaration shall be adopted or passed which shall impair or prejudice the rights and priorities of any Mortgagee without the written consent of such Mortgagee. During the Declarant Control Period, no amendment to this Declaration shall be effective without the written consent of Declarant.

ARTICLE XVI  
TERMINATION

The Condominium may be terminated and the Property removed from the provisions of the North Carolina Condominium Act only by the vote not less than eighty percent (80%) of the Owners of Units, and not less than eighty percent (80%) of the Mortgagees, cast in person or by proxy at a meeting duly held in accordance with the provisions of the Bylaws, and as evidenced by execution of a termination agreement, or ratification thereof, by the requisite number of Owners and Mortgagees. The termination shall comply with the requirements of N.C. Gen. Stat. §47C-2-118, and must be recorded in the Office of the Register of Deeds for Wake County before it becomes effective. Following the recordation of the termination agreement, the interests of the Owners and Mortgagees in the Property shall be as provided in N.C. Gen. Stat. §47C-2-118.

## ARTICLE XVII MORTGAGEE PROTECTION

Section 17.1 General Provisions. This Article XVII establishes certain standards and covenants for the benefit of Mortgagees. This Article XVII is supplemental to, and not in substitution for, any other provisions of the Condominium Documents, but in the event of any conflict between the provisions of the Condominium Documents and the provisions of this Article XVII, the provisions of this Article XVII shall control.

Section 17.2 Percentage of Mortgagees. Wherever in the Condominium Documents the approval or consent of a specified percentage of Mortgagees is required, it shall mean the approval or consent of Mortgagees holding Mortgages on Units which have allocated to them that specified percentage of votes in the Association, as compared to the total votes in the Association allocated to all Units then subject to Mortgages held by Mortgagees.

Section 17.3 Rights to Examine Books and Records. Any Mortgagee, and any insurer or guarantor of a loan secured by a Mortgage, shall have the right to examine, during normal business hours and upon reasonable notice, the books and records of the Association, including copies of the Condominium Documents, as amended, and the financial statements of the Association, and to be furnished, upon written request, at least one copy of the annual financial statement and report of the Association, such annual statement and report to be furnished within ninety (90) days following the end of each fiscal year. If any Mortgagee requests, and agrees to pay the cost of the audit, the financial statement shall be audited by an independent certified public accountant.

Section 17.4 Mortgagee's Rights to Notice. Any Mortgagee (including, for purposes of this Section 17.4, any insurer or guarantor of a loan secured by a Mortgage that has notified the Association in writing of its name and address, and that it insures or guarantees a Mortgage) shall have the right to receive from the Association prompt written notice of the following:

- (a) Default under any of the terms and provisions of the Condominium Documents by any Owner owning a Unit encumbered by a Mortgage held, insured, or guaranteed by such Mortgagee, which default remains uncured for a period of thirty (30) days.

(b) Any loss or damage to or condemnation or taking of the Common Elements or any loss or damage to or condemnation or taking of a Unit encumbered by a Mortgage held, insured or guaranteed by such Mortgagee.

(c) Any lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association.

(d) Any proposed action by the Association, the Executive Board, or the Owners, which under the terms of the Condominium Documents requires the consent of all or any portion of the Mortgagees.

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

Section 17.5 Consent and Notice Required. Notwithstanding any other provision of this Declaration or the Condominium Documents, no amendment of any material provision of the Condominium Documents described in this Section 17.5 shall be effective without notice to all Mortgagees, as required by Section 17.4, the vote of at least sixty-seven percent (67%) of the Owners (or any greater percentage required by the terms of the Condominium Documents), and the approval of at least fifty-one percent (51%) of the Mortgagees (or any greater percentage required by the terms of the Condominium Documents). A change to any of the following items will be considered material:

- (a) Voting rights.
- (b) Increases in assessments that raise the previously assessed amount by more than twenty-five percent (25%), assessment liens, or the priority of assessment liens.
- (c) Reductions in reserves for maintenance, repair, and replacement of the Common Elements.
- (d) Responsibility for maintenance and repairs of the Units, the Limited Common Elements, or the Common Elements.
- (e) Except for the Development Rights of Declarant reserved as Special Declarant Rights under Article VII above, reallocation of interests in the Common Elements or the Limited Common Elements, except that when Limited Common Elements are reallocated by agreement between Owners of Units, then only those Owners and only the Mortgagees holding Mortgages on those Units need approve such reallocations.

(f) Redefinition of boundaries of Units, except that when the boundaries of only adjoining Units are involved, then only the Owners of those Units and the Mortgagees holding Mortgages on those Units must approve such action.

(g) Convertibility of Units into Common Elements, or Common Elements into Units.

(h) Except for the Development Rights of Declarant reserved as Special Declarant Rights under Article VII above, the expansion or contraction of Condominium, or the addition, annexation or withdrawal of property to or from the Condominium.

(i) The requirements for insurance and fidelity bonds.

(j) The imposition of any restrictions on the leasing of Units.

(k) The imposition of any restrictions on an Owner's right to sell or transfer his Unit.

(l) The restoration or repair of the Property after casualty damage or partial condemnation in a manner other than that specified in the Condominium Documents.

(m) Any termination of the Condominium after occurrence of substantial destruction or condemnation.

(n) Any provision that expressly benefits the Mortgagees.

Section 17.6 Other Mortgagee Rights. Notwithstanding any other provision of this Declaration or the Bylaws, the Association may not change the period for collection of regularly budgeted Common Expenses to other than monthly without the consent of all Mortgagees. Any representative of a Mortgagee may attend and address any meeting that an Owner may attend.

Section 17.7 Enforcement. The provisions of this Article XVII are for the benefit of all Mortgagees and their successors, and may be enforced by any of them by any available means.

## ARTICLE XVIII CONDEMNATION

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

ARTICLE XIX  
MISCELLANEOUS PROVISIONS

Section 19.1 Invalid. The invalidity of any provision of this Declaration shall not be deemed to impair or affect in any manner the validity and enforceability of the remainder of this Declaration, and in such event, all the other provisions of this Declaration shall continue in full force and effect as if such invalid provision had never been included herein.

Section 19.2 Waiver. No provisions contained in the Declaration shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches which may occur.

Section 19.3 Captions. The captions herein are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope of this Declaration or the intent of any provision hereof.

Section 19.4 Law Controlling. This Declaration and the Condominium Documents shall be construed and controlled by and under the laws of the State of North Carolina.

Section 19.5 Liberal Construction. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan of condominium ownership as provided in the North Carolina Condominium Act. Throughout this Declaration wherever appropriate, the singular shall include the plural and the masculine gender the feminine or neuter as the context permits or requires.

ARTICLE XX  
ENFORCEMENT; ARBITRATION

Section 20.1 Actions by the Association. The Association, or the Executive Board acting on its behalf, shall have the right, in addition to any other remedies provided for in the Condominium Documents, to bring a civil action against any Owner to enforce any obligation, covenant or restriction set forth in this Declaration or the other Condominium Documents.

Section 20.2 Actions by Owners. Any Owner may also bring a civil action against any other Owner, or against the Association, or against the Executive Board, or any one or more of them, to enforce any obligation, covenant or restriction set forth in this Declaration or the other Condominium Documents.

Section 20.3 Arbitration. Each Owner, by accepting a deed to a Unit, agrees that any Owner may require that any unresolved matter between the Owners or before the Executive Board or before the Association be submitted to binding arbitration pursuant to the Uniform Arbitration Act set forth in N.C. Gen. Stat. §1-567. 1 *et seq.* as the same shall be amended from time to time. The fees and expenses of arbitration shall be paid as set forth in the award and shall not be a Common Expense unless all Owners so agree in writing, or unless such award is to be paid by the Association.

ARTICLE XX  
CONSENT OF MORTGAGEE

The Land and the Buildings are currently encumbered by the lien of a Deed of Trust, Assignment of Rents, Security Agreement and Financing Statement dated March 8, 2001, executed and delivered by Declarant to New Salem, Inc. as Trustee for Wachovia Bank, N.A. A Consent of Mortgagee executed by New Salem, Inc. as Trustee, and Wachovia Bank, N.A., consenting to the execution and recordation of this Declaration, is attached to and made a part of this Declaration.

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

STERLING GLENWOOD VILLAGE, LLC, a  
North Carolina limited liability company

By: Grubb Properties, Inc., Manager

By:   
R. Gordon Grubb, Vice President

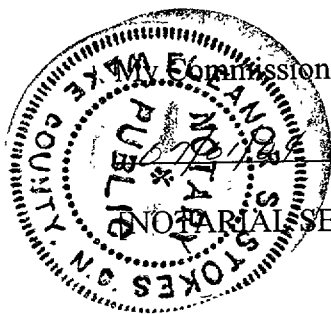
STATE OF NORTH CAROLINA

COUNTY OF WAKE

I, Eleanor A. Stokes, a Notary Public of aforesaid County and State, certify that R. GORDON GRUBB personally came before me this day and acknowledged that he is Vice President of GRUBB PROPERTIES, INC., a North Carolina corporation, Manager of STERLING GLENWOOD VILLAGE, LLC, a North Carolina limited liability company, and that he, as President, being authorized to do so, executed the foregoing on behalf of the corporation as Manager of the limited liability company.

Witness my hand and official seal, this the 13<sup>th</sup> day of February, 2002.

Eleanor A. Stokes  
NOTARY PUBLIC



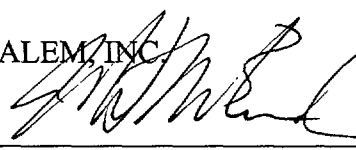
## CONSENT OF MORTGAGEE

ATTACHED TO DECLARATION OF CONDOMINIUM  
FOR THE GARDENS ON GLENWOOD CONDOMINIUM

Wachovia Bank, N.A., being the Beneficiary under that certain Deed of Trust, Assignment of Rents, Security Agreement and Financing Statement from Declarant to New Salem, Inc. Trustee, recorded in Book 8834 at page 1537 in the Wake County, North Carolina Public Registry, conveying the property described on Exhibit A attached to this Declaration, does consents to the recordation of this Declaration and the imposition of the provisions hereof and the provisions of the North Carolina Condominium Act to the real property described in such Exhibit A . The execution of this Consent of Mortgagee by the Beneficiary shall not be deemed or construed to have the effect of creating between the Beneficiary and Declarant the relationship of partnership or of joint venture, nor shall it be deemed to impose upon the Beneficiary any of the liabilities, duties or obligations of Declarant under the Declaration. Beneficiary executes this Consent of Mortgagee solely for the purposes set forth above. The Trustee also joins in and executes this Consent as Trustee for the purposes set forth above.

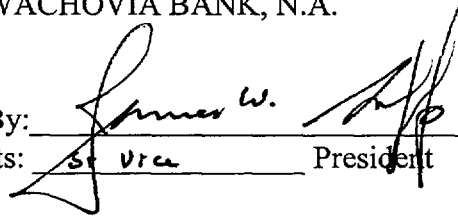
TRUSTEE:

NEW SALEM, INC.

By: Its: VICE President

BENEFICIARY:

WACHOVIA BANK, N.A.

By: Its: St Vice President

STATE OF NORTH CAROLINA

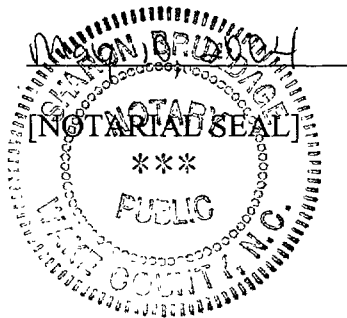
COUNTY OF Wake

I, Sharon Brundage, a Notary Public of aforesaid County and State, certify that Martin W. Borden personally <sup>trustee</sup> came before me this day and acknowledged that (s)he is Vice President of New Salem, Inc., a North Carolina corporation, and that (s)he, as Vice President, being authorized to do so, executed the foregoing on behalf of the corporation.

Witness my hand and official seal, this the 13<sup>th</sup> day of February, 2002

Sharon Brundage  
NOTARY PUBLIC

My Commission Expires:



STATE OF NORTH CAROLINA

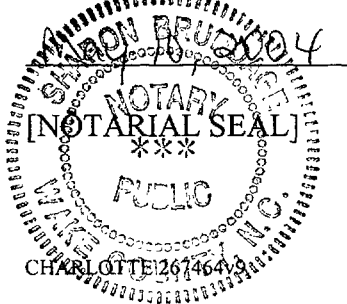
COUNTY OF Wake

I, Sharon Brundage, a Notary Public of aforesaid County and State, certify that James W. Sapp personally came before me this day and acknowledged that (s)he is Sr. Vice President of Wachovia Bank, N.A., a national banking association, and that (s)he, as Sr. Vice President, being authorized to do so, executed the foregoing on behalf of the corporation.

Witness my hand and official seal, this the 13<sup>th</sup> day of February, 2002.

Sharon Brundage  
NOTARY PUBLIC

My Commission Expires:



**EXHIBIT A****LEGAL DESCRIPTION OF LAND**

All that certain lot, parcel or tract of land located in Raleigh, Wake County, North Carolina and more particularly described as follows

BEGINNING at a point on the southwesterly right of way margin of Glenwood Avenue (Variable R/W), said point also being the northern corner of the property of Glenwood Associates, LP (now or formerly) as described in deed recorded in Deed Book 4995, Page 468, aforesaid registry; thence along the westerly line of the Glenwood Associates, LP property, South 17-38-51 West 499.65 feet to a point located at the northern corner of the property of Earl R. and Clara M. Bennett (now or formerly) as described in deed recorded in Deed Book 1661, Page 558, aforesaid registry; thence along the westerly line of the Bennett property the following two courses and distances: (1) South 19-01-26 West 206.08 feet to a point and (2) South 25-37-09 West 20.76 feet to a point located at the easterly line of the property of Samuel J. and Laurie W. Sugg (now or formerly) as described in deed recorded in Deed Book 5828, Page 249, aforesaid registry; thence with a new line through the Sugg property the following two courses and distances: (1) North 73-32-15 West 228.51 feet to a point and (2) North 00-23-11 West 21.42 feet to a point located at the southeasterly corner of Lot 10, Block 6, Lakeview Section of Budleigh, as shown on plat recorded at Book of Maps 1928, Page 11, aforesaid registry; thence along the easterly line of said Lot 10, North 00-23-11 West 167.52 feet to a point located at the southeasterly corner of Lot 9, Block 6, Lakeview Section of Budleigh; thence along the easterly line of said Lot 9, North 35-05-20 West 200.84 feet to a point located at the southeasterly corner of Lot 8, Cambridge Woods, as shown on plat recorded in Book of Maps 1967, Page 1876, aforesaid registry; thence along the easterly lines of said Lot 8 and Lots 7, 6 & 5, Cambridge Woods, the following three courses and distances: (1) North 11-39-37 West 70.68 feet to a point; (2) North 74-48-06 East 43.55 feet to a point and (3) North 34-31-48 West 396.31 feet to a point located at the southwesterly corner of Lot 3, Lakeview Section of Budleigh, as shown on plat recorded at Book of Maps 1941, Page 33, aforesaid registry; thence along the southerly line of said Lot 3, South 84-30-00 East 100.06 feet to a point; along the southerly line of Lot 4, Lakeview Section of Budleigh, South 85-17-18 East 99.42 feet to a point; thence along the southerly line of Lot 5, Lakeview Section of Budleigh, South 85-01-30 East 99.98 feet to a point; thence along the southerly line of Lot 6, Lakeview Section of Budleigh, South 84-54-43 East 75.15 feet to a point located at the easterly corner of Lot 1, Glenwood Village, as same is shown on plat recorded at Book of Maps 1960, Page 131, aforesaid registry; thence along the southerly and easterly lines of said Lot 1 and Lot 2, Glenwood Village, the following three courses and distances: (1) with the arc of a circular curve to the left with a radius of 173.85 feet, an arc distance of 156.51 feet and being subtended by a chord bearing South 53-24-17 East 151.27 feet to a point; (2) South 79-11-41 East 117.79 feet to a point; and (3) North 28-58-48 East 76.24 feet to a point located on the southwesterly right of way margin of Glenwood Avenue and at the northeasterly corner of said Lot 2; thence along the southwesterly right of way margin of Glenwood Avenue the following two courses and distances: (1) South 62-38-06 East 63.30 feet to a point and (2) South 64-03-19 East 63.32 feet to the POINT AND PLACE OF BEGINNING, containing 7.3753 acres, more or less, as same is shown on survey prepared by John A. Edwards & Company, dated July 20, 2000.

Said property also being shown as Lot 1 on plat recorded in Book of Maps 2000, Page 1664, Wake County Registry.

EXHIBIT B

| UNIT | UNIT TYPE | HEATED SQ.<br>FOOTAGE | GROSS SQ.<br>FOOTAGE | % INTEREST IN COMMON<br>ELEMENTS |
|------|-----------|-----------------------|----------------------|----------------------------------|
| 1207 | A1.302    | 1511                  | 1605                 | 2.903%                           |
| 1307 | A1.303    | 1486                  | 1580                 | 2.857%                           |
| 1407 | A1.304    | 1488                  | 1580                 | 2.857%                           |
| 1204 | C1.102    | 1911                  | 2039                 | 3.687%                           |
| 1304 | C1.103    | 1889                  | 2017                 | 3.648%                           |
| 1404 | C1.104    | 1895                  | 2017                 | 3.648%                           |
| 1203 | C1.112    | 1800                  | 1912                 | 3.458%                           |
| 1303 | C1.113    | 1771                  | 1887                 | 3.413%                           |
| 1403 | C1.114    | 1774                  | 1887                 | 3.413%                           |
| 1202 | C1.122    | 1916                  | 2041                 | 3.691%                           |
| 1302 | C1.123    | 1893                  | 2016                 | 3.646%                           |
| 1402 | C1.124    | 1899                  | 2016                 | 3.646%                           |
| 1208 | D1.102    | 2081                  | 2243                 | 4.057%                           |
| 1308 | D1.103    | 2081                  | 2243                 | 4.057%                           |
| 1408 | D1.104    | 2090                  | 2243                 | 4.057%                           |
| 1201 | F1.112    | 2824                  | 3001                 | 5.427%                           |
| 1301 | F1.113    | 2824                  | 3001                 | 5.427%                           |
| 1401 | F1.114    | 2840                  | 3001                 | 5.427%                           |
| 1206 | G1.102    | 2321                  | 2455                 | 4.440%                           |
| 1306 | G1.103    | 2321                  | 2455                 | 4.440%                           |
| 1406 | G1.104    | 2327                  | 2455                 | 4.440%                           |
| 1205 | G1.202    | 3010                  | 3200                 | 5.787%                           |
| 1305 | G1.203    | 3010                  | 3200                 | 5.787%                           |
| 1405 | G1.204    | 3018                  | 3200                 | 5.787%                           |

Heated square footage is determined by measuring from the interior surface of unit boundary walls.

**EXHIBIT C****BYLAWS OF  
THE GARDENS ON GLENWOOD CONDOMINIUM  
OWNERS ASSOCIATION, INC.****Section 1****Definitions**

The words, phrases and terms used in these Bylaws shall have the meanings as set forth in the Declaration of Condominium for The Gardens on Glenwood Condominium, recorded in the Office of the Register of Deeds for Wake County, North Carolina.

**Section 2****Administration of Condominium**

Section 2.1 Authority and Responsibility: Except as otherwise specifically provided in the Condominium Documents, the Association shall be responsible for administering, operating and managing the Common Elements.

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

**Section 3****Offices - Seal - Fiscal Year**

Section 3.1 Principal Office and Registered Office: The initial principal office and registered office of the Association shall be located at 11000 Regency Parkway, Suite 101, Cary, North Carolina 27511.

Section 3.2 Other Offices: The Association may have other offices at such other places within the State of North Carolina as the Executive Board may from time to time determine or as the affairs of the Association may require.

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

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

## Section 4

### Membership

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

Membership in the Association shall inure automatically to Owners upon acquisition of the fee simple title (whether encumbered or not) to any one or more Units. The date of recordation in the Office of the Register of Deeds of Wake County of the conveyance of the Unit in question shall govern the date of ownership of each particular Unit. However, in the case of death, the transfer of ownership shall occur on date of death in the case of intestacy or date of probate of the will in the case of testacy. Until a decedent's will is probated, the Association may rely on the presumption that a deceased Owner died intestate.

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

Section 4.3 Annual Meetings: A meeting of the Association shall be held at least once each year. The first Annual Meeting of the Association shall be held on the date and hour designated by Declarant. Thereafter, the Annual Meeting of the Association shall be held on the third Monday in February of each year at 8:00 p.m., Eastern Standard Time. If the third Monday in February shall be a legal holiday, the Annual Meeting shall be held at the same hour on the first day following which is not a legal holiday. At such meetings, the Executive Board shall be elected in accordance with Section 5.3 of these Bylaws, and the Members shall transact such other business as may properly come before them.

Section 4.4 Substitute Annual Meeting: If an Annual Meeting shall not be held on the day designated by these Bylaws, a Substitute Annual Meeting may be called in accordance with the provisions of Sections 4.5 and 4.6. A meeting so called shall be designated and treated for all purposes as the Annual Meeting.

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

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

discretion of the President or the Secretary, to the address of each Unit. Notice shall be deemed given upon deposit in the mail depository of each Unit.

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

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

**Section 4.7 Quorum:** Except as otherwise provided in these Bylaws, the presence in person or by proxy of Members entitled to cast twenty percent (20%) of the votes which may be cast for election of the Executive Board shall, constitute a quorum at all meetings of the Members. If a quorum is not present or represented at any meeting, the Members entitled to vote thereat shall have the power to adjourn the meeting from time to time, without notice other than the announcement at the meeting, until a quorum is present or is represented. The Members at any meeting at which a quorum is present may continue to do business until adjournment, notwithstanding the withdrawal of enough Members to leave less than a quorum.

**Section 4.8 Voting Right:** The total number of votes of the Association Membership shall be equal to the number of Units contained within the Condominium from time to time, and each Member shall be entitled to one (1) vote. If fee simple title to a Unit is owned of record by more than one person or entity, all such persons or entities shall be Members of the Association, but the vote with respect to any such jointly owned Unit shall be cast as hereinafter provided.

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

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

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

**Section 4.9 Proxies:** Members may vote either in person or by agents duly authorized by written proxy executed by the subject Member or by his duly authorized attorney-in-fact. A proxy is not valid after the earlier of the term stated therein or the expiration of twelve (12) months from the date of its execution. Unless a proxy otherwise provides, any proxy holder may appoint in writing a substitute to act in his place. In order to be effective, all proxies must be filed with the Secretary or duly acting Secretary either during or prior to the meeting in question. A member may not revoke a

proxy given pursuant to this Section 4.9 except by written notice of revocation delivered to the person presiding over a meeting of the Association.

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

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

Section 4.11 Actions Without Meeting: Any action which may be taken at a meeting of the membership may be taken without a meeting if consent or ratification, in writing, setting forth the action so taken or to be taken shall be signed by all of the persons who would be entitled to vote upon such action at a meeting and such consent is filed with the Secretary of the Association and inserted in the minute book of the Association.

## **Section 5**

### **Executive Board**

Section 5.1 General Powers: The business and affairs of the Association shall be managed by the Executive Board or by such committees as the Executive Board may establish pursuant to Section 6 of these Bylaws. Provided, however, the Executive Board may not act on behalf of the Association to amend the Declaration, to terminate the Condominium, to elect members of the Executive Board, or to determine the qualifications, powers and duties, or terms of office of Executive Board members. The Executive Board may, however, fill vacancies in its membership for the unexpired portion of any term.

Section 5.2 Number, Term and Qualification: The initial Executive Board shall consist of the three (3) individuals appointed by Declarant whose names are set forth in the Articles of Incorporation of the Association. During the Declarant Control Period, the Executive Board shall have three (3) members, and Declarant may appoint and remove members of the Executive Board; subject, however to the limitations contained in Section 9.3 of the Declaration. Prior to the expiration of the Declarant Control Period, the Members shall elect five (5) Board members, each to serve for a term of one (1) year, and thereafter the Executive Board shall have five (5) members. Board members may succeed themselves in office.

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

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

question of such removal will be acted upon at the subject meeting. If any Board members are so removed, their successors as Board members may be elected by the membership at the same meeting to fill the unexpired terms of the Board members so removed.

Section 5.5 Vacancies: Subject to Section 5.4 above, vacancy occurring in the Executive Board may only be filled by a majority of the remaining Board members, though less than a quorum, or by the sole remaining Board member; but a vacancy created by an increase in the authorized number of Board members shall be filled only by election at an Annual or substitute Annual Meeting or at a Special Meeting of Members called for that purpose or by unanimous consent of the Members without meeting. The Members may elect a Board member at any time to fill any vacancy not filled by the Board members. As indicated in Section 5.4, the Membership shall have the first right to fill any vacancy created by the Membership's removal of a Board member.

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

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

Section 5.8 Loans to Board Members and Officers: No loans shall be made by the Association to its Board members or officers. The Board members who vote for or assent to the making of a loan to a Board member or officer of the Association, and any officer or officers participating in the making of such loan, shall be jointly and severally liable to the Association for the amount of such loan until the repayment thereof

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

#### Section 5.10 Meetings of the Executive Board:

A. Regular Meeting: Regular Meetings shall be held, without notice, at such hour and address as may be fixed from time to time by resolution of the Board. Should any such meeting fall upon a legal holiday, then that meeting shall be held at the same time on the next day which is not a legal holiday.

B. Special Meetings: Special Meetings shall be held when called by the President of the Association, or by any Board member, after not less than three (3) or more than thirty (30) days written notice to each Board member.

C. Notices of Special Meetings: The notice provided for herein may be waived by written instrument signed by those Board members who do not receive said notice. Except to the extent otherwise required by law, the purpose of a Board members' special meeting need not be stated in the notice. Notices shall be deemed received upon the happening of any one of the following events: (1) one day following deposit of same in the United States mail with proper postage paid and addressed to the Board member at his last known address on file with the Association; (2) deposit of same in his Unit mail box; (3) delivery to the Board member. Attendance by a Board member at a meeting shall constitute a waiver of notice of such meeting unless the subject Board member gives a written statement at the meeting to the person presiding objecting to the transaction of any business because the meeting is not lawfully called and gives such notice prior to the vote on any resolution.

D. Approved Meeting Place: All Board meetings shall be held in Wake County, North Carolina.

E. Quorum: A majority of the Board members then holding office shall constitute a quorum for the transaction of business and every act or decision done or made by a majority of the Board members present at a duly held meeting at which a quorum is present shall be regarded as the act or decision of the Board.

Section 5.11 Action Without Meeting: The Board members shall have the right to take any action in the absence of a meeting which they could take at a meeting by obtaining the written approval of all the Board members. Any action so approved shall have the same effect as though taken at a meeting of the Board. Said written approval shall be filed with the minutes of the proceedings of the Board, whether done before or after the action so taken.

Section 5.12 Presumption of Assent: A Board member who is present at a meeting of the Board at which action on any corporate matter is taken shall be presumed to have assented to the action taken unless his contrary vote is recorded or his dissent is otherwise entered in the minutes of the meeting or unless he shall file his written dissent to such action with the person acting as the Secretary of the meeting before the adjournment thereof or shall forward such dissent by registered mail to the Secretary of the Association immediately after the adjournment of the meeting. Such right to dissent shall not apply to a Board member who voted in favor of such action.

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

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

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

C. Employment and dismissal of personnel (including without limitation the Independent Manager) necessary for the efficient operation, maintenance, repair, and replacement of the Common Elements;

D. Adoption of rules and regulations covering the details of the operation, maintenance, repair, replacement, use and modification of the Common Elements;

E. Opening of bank accounts on behalf of the Association and designating the signatories required therefor;

F. Obtaining insurance as required or permitted under the terms of the applicable provisions of the Declaration;

G. Keeping detailed, accurate records of the receipts and expenditures of the Association; obtaining annual audits of the financial records of the Association from the Association's public accountant; furnishing the annual reports; and furnishing current budgets. All books and records shall be kept in accordance with good and accepted accounting practices and the same shall be available for examination by all Owners or their duly authorized agents or attorneys, at convenient hours on working days;

H. Keeping a complete record of the minutes of all meetings of the Board and Membership in which minute book shall be inserted actions taken by the Board and/or Members by consent without meeting;

I. Supervising all officers, agents and employees of the Association and insuring that their duties are properly performed;

J. Enforcing, on behalf of the Association, the obligations and assessments provided in the Declaration, including, but not limited to, the institution of civil actions to enforce payment of the assessments as provided in the Declaration, the institution of actions to foreclose liens for such assessments in accordance with the terms of N.C. Gen. Stat. §47C-3-116, the imposition of charges for late payment of assessments, and after notice and an opportunity to be heard, levying reasonable fines not to exceed One Hundred Fifty and No/100 Dollars (\$150.00), or the highest amount permitted by law, for violations of the Declaration, Bylaws and rules and regulations of the Association;

K. Making of repairs, additions, and improvements to or alterations or restoration of the Property in accordance with the other provisions of these Bylaws and the Declaration, after damage or destruction by fire or other casualty, or as a result of a condemnation or eminent domain proceeding;

L. Enforcing by any legal means or proceeding the provisions of the Articles of Incorporation of the Association, these Bylaws, the Declaration or the rules and regulations hereinafter promulgated governing use of the Common Elements;

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

N. Hiring attorneys and other professionals;

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

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

Q. Signing all agreements, contracts, deeds and vouchers for payment of expenditures and other instruments in such manner as from time to time shall be determined by written resolution of the Board. In the absence of such determination by the Board, such documents shall be signed by either the Treasurer or the Assistant Treasurer of the Association, and countersigned by any Board member;

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

S. Exercising any other powers and duties reserved to the Association exercisable by the Executive Board in the Declaration, the Articles of Incorporation, these Bylaws, or the North Carolina Condominium Act.

Section 5.14 Independent Manager: The Executive Board may employ or enter into a management contract with any individual, firm or entity it deems appropriate and in the best interest of the Association concerning the routine management of the Condominium. The Executive Board may delegate to such person, firm or entity (referred to in these Bylaws as "Independent Manager") such duties and responsibilities in the management of the Property as the Executive Board deems appropriate. Provided, the Executive Board may not delegate to the Independent Manager the complete and total responsibilities and duties of the Association in violation of the Nonprofit Corporation Act of North Carolina or the North Carolina Condominium Act. The Independent Manager's contract shall be for a term not to exceed three (3) years, renewable by agreement between the Executive Board and such Independent Manager for successive one-year terms; provided, however, that any such contract shall provide that it is terminable by the Association, with or without cause, upon not more than ninety (90) days' prior written notice and without payment of any penalty, and any such contract entered into

during the Declarant Control Period also shall be terminable as required by N.C. Gen. Stat. §47C-3-105. The Executive Board shall have authority to fix the reasonable compensation for the Independent Manager. The Independent Manager shall at all times be answerable to the Executive Board and subject to its direction.

## Section 6

### Committees

Section 6.1 Creation: The Executive Board, by resolutions adopted by a majority of the number of Board members then holding office, may create such committees as they deem necessary and appropriate in aiding the Executive Board to carry out its duties and responsibilities with respect to the management of the Condominium. Each committee so created shall have such authorities and responsibilities as the Board members deem appropriate and as set forth in the resolutions creating such committee. The Executive Board shall elect the members of each such committee. Provided, each committee shall have in its membership at least one (1) member of the Executive Board.

Section 6.2 Vacancy: Any vacancy occurring on a committee shall be filled by a majority of the number of Board members then holding office at a regular or special meeting of the Executive Board.

Section 6.3 Removal: Any member of a committee may be removed at any time with or without cause by a majority of the number of Board members then holding office.

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

Section 6.5 Responsibility of Board Members: The designation of committees and the delegation thereto of authority shall not operate to relieve the Executive Board or any member thereof of any responsibility or liability imposed upon it or him by law.

If action taken by a committee is not thereafter formally considered by the Board, a Board member may dissent from such action by filing his written objection with the Secretary with reasonable promptness after learning of such action.

## Section 7

### Officers

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

Section 7.2 Election and Term: The officers of the Association shall be elected annually by the Executive Board. Such elections shall be held at the first meeting of the Board next following the

Annual or Substitute Annual Meeting of the Members. Each officer shall hold office until his death, resignation, removal or until his successor is elected and qualified.

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

Section 7.4 Vacancy: A vacancy in any office may be filled by the election by the Executive Board of a successor to such office. Such election may be held at any meeting of the Board. The officer elected to such vacancy shall serve for the remaining term of the officer he replaces.

Section 7.5 Multiple Offices: The person holding the office of President shall not also hold the office of Secretary or Treasurer at the same time. Any other offices may be simultaneously held by one person. Any officer may also be a member of the Executive Board.

Section 7.6 President: The President shall be the chief executive officer of the Association and shall preside at all meetings of the Members. In the absence of an elected Chairman, he shall also preside at all meetings of the Executive Board. He shall see that the orders and resolutions of the Executive Board are carried out; he shall sign all written instruments regarding the Common Elements and co-sign all promissory notes of the Association, if any; and he shall have all of the general powers and duties which are incident to the office of President of a corporation organized under Chapter 55A of the North Carolina General Statutes in the supervision and control of the management of the Association in accordance with these Bylaws.

Section 7.7 Vice Presidents: The Vice Presidents in the order of their election, unless otherwise determined by the Executive Board shall, in the absence or disability of the President, perform the duties and exercise the powers of that office. In addition, they shall perform such other duties and have such other powers as the Executive Board shall prescribe.

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

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

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

assigned to them by the Secretary or the Treasurer, respectively, or by the President or the Executive Board.

Section 7.11 Compensation: Officers shall not be compensated on a regular basis for the usual and ordinary services rendered to the Association incident to the offices held by such officers. The Executive Board may, however, compensate any officer or officers who render unusual and extraordinary services to the Association beyond that called for to be rendered by such person or persons on a regular basis. Each officer, by assuming office, waives his right to institute suit against or make claim upon the Association for compensation based upon *quantum meruit*.

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

## Section 8

### Operation of the Property

Section 8.1 Determination of Common Expenses and Fixing of the Common Charges: The Executive Board shall from time to time, and at least annually, prepare and adopt a proposed budget for the Condominium, determine the amount of the Common Expenses payable by the Owners to meet the proposed budget of the Condominium, and allocate and assess such proposed Common Expenses among the Owners in equal shares (based upon the total number of Units in the Condominium), all in accordance with the procedure set forth in this Section 8, but subject to the limitations set forth in Article XVII of the Declaration. The Common Expenses shall include, among other things, the cost of all insurance premiums on all policies of insurance required to be or which have been obtained by the Executive Board pursuant to the provisions of the Declaration. The Common Expenses shall also include such amounts as the Executive Board deems necessary for the operation and maintenance of the Property, including without limitation, an amount for working capital of the Condominium; an amount for a general operating reserve; an amount for a reserve fund for losses due to insurance deductibles; an amount for a reserve fund for repair and replacement of the Common Elements; and such amounts as may be necessary to make up any deficit in the Common Expenses for any prior year. Within thirty (30) days after adoption of any proposed budget for the Condominium, the Executive Board shall provide a summary of the budget to all the Owners, and shall set a date for a meeting of the Owners to consider ratification of the budget no less than fourteen (14) nor more than thirty (30) days after mailing of the summary. Notwithstanding any other provisions of these Bylaws, there shall be no requirement that a quorum be present at such meeting. Notwithstanding any other provision of these Bylaws, the proposed budget shall be deemed ratified unless at that Meeting a majority of all the Owners present and entitled to cast a vote reject the budget. In the event the proposed budget is rejected, the periodic budget last ratified shall be continued until such time as the Owners ratify a subsequent budget proposed by the Executive Board.

The Association, acting through the Executive Board, may levy a special assessment during any calendar year for the purpose of defraying, in whole or in part, the cost of any construction,

reconstruction, repair or replacement of any capital improvement comprising or to comprise a portion of the Common Elements, including fixtures and personal property; provided, however, that any such special assessment must be approved by the vote of Owners of Units to which at least sixty-seven percent (67%) of the votes in the Association are allocated cast in person or by proxy at a meeting duly held in accordance with the provisions of these Bylaws. In the event that any Owner fails to maintain its Unit and the Association takes actions to do so as set forth in Section 5.13.O hereof, or any Owner defaults under its obligations under the Declaration or these Bylaws and the Association incurs any additional costs and expenses as a result of such default, the Association shall have the right to levy a special assessment against such Owner for the purposes of defraying, in whole or in part, such costs or expenses.

The Declarant, as the agent of the Association, shall collect from each initial purchaser of a Unit at the time of closing an "initial capital assessment" equal to twice the estimated monthly assessment for Common Expenses, but not to exceed \$414.00, in aggregate. Such funds shall not be considered advance payments of assessments. The Declarant will deliver the funds so collected to the Association to provide the necessary working capital for the Association. In addition, upon the expiration of the Declarant Control Period, the Declarant shall forward to the Association a contribution to the working capital fund, in the amount specified above, for each unsold Unit in the Condominium held by Declarant, and in that event, Declarant shall be entitled to retain as a reimbursement the working capital contributions ultimately made by the initial purchasers of such Units. Such funds may be used for certain prepaid items, initial equipment and supplies, organizational expenses and other start-up costs, and for such other purposes as the Executive Board may determine. Except for the permitted reimbursement of prepaid contributions referred to above, the Declarant may not use the working capital fund to defray any of the Declarant's expenses, reserve contributions, or construction costs, or to make up any budget deficits of the Association during the Declarant Control Period.

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

No Owner shall be liable for the payment of any part of the Common Expenses assessed against his Unit subsequent to a sale, transfer or other conveyance by him (made in accordance with the provisions of the Declaration and applicable restrictions of record) of such Unit. A purchaser of a Unit shall be jointly and severally liable with the seller for the payment of Common Expenses assessed against such Unit prior to the acquisition by the purchaser of such Unit without prejudice to the purchaser's rights to recover from the seller the amounts paid by the purchaser therefor.

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

The Executive Board shall notify the holder of the Mortgage on any Unit (of which it has notice) for which any Common Expenses assessed pursuant to these Bylaws remain unpaid for more than thirty (30) days from the due date for payment thereof and in any other case where the Owner of

such Unit is in default with respect to the performance of any other obligation hereunder for a period in excess of thirty (30) days.

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

The Executive Board shall have the right and duty to attempt to recover such Common Expenses, together with interest thereon, and the expenses of the proceedings, including reasonable attorneys' fees (if permitted by law), in an action to recover a money judgment for the same brought against such Owner, or by foreclosure of the lien on such Unit in like manner as a deed of trust or mortgage of real property. The Executive Board shall also have the right to impose uniform late payment charges for delinquent Common Expense payments, which charges shall be recoverable by the proceedings specified above.

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

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

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

Section 8.6 Foreclosure of Liens for Unpaid Common Expenses: In any action brought by the Executive Board to foreclose on a Unit because of unpaid Common Expenses or special assessments, the Owner shall be required to pay a reasonable rental for the use of his Unit and the plaintiff in such foreclosure action shall be entitled to the appointment of a receiver to collect the same.

Section 8.7 Abatement and Enjoyment of Violations by Owners: The violation of any rule or regulation adopted by the Executive Board or the breach of any Bylaw contained herein, or the breach of any provision of the Declaration, shall give the Board the right, in addition to any other rights set forth in the Declaration, these Bylaws or at law or in equity: (a) to enter the Unit in which or as to which such violation or breach exists and to summarily abate and remove, at the expense of the defaulting Owner, any structure, thing or condition that may exist therein contrary to the intent and meaning of the provisions hereof, and the Board shall not thereby be deemed guilty in any manner of trespass; (b) to enjoin, abate or remedy by appropriate legal proceedings, either at law or in equity, the continuance of any such breach at the expense of the defaulting Owner; and/or (c) after notice and opportunity to be heard, to levy reasonable fines not to exceed One Hundred Fifty and No/100 Dollars (\$150.00) per day, or the highest amount permitted by law, for continuing violations.

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

Section 8.9 Additions, Alterations or Improvements by Owners: No Owner shall make any structural addition, alteration, or improvement in or to his Unit or to any Limited Common Element, or any change in the exterior appearance thereof, except in accordance with N.C. Gen. Stat. §47C-2-111 and in accordance with the terms of the Declaration.

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

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

Section 8.12 Rules of Conduct: Rules and regulations concerning the use of the Units and the Common Elements shall be promulgated and amended by the Board with the approval of a majority of Owners. Copies of such rules and regulations shall be furnished by the Board to each Owner prior to the time when the same shall become effective.

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

## **Section 9**

### **Amendments**

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

## **Section 10**

### **Miscellaneous**

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

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

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

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

Laura M Riddick  
Register of Deeds  
Wake County, NC



Book : 009291 Page : 00145 - 00196

Yellow probate sheet is a vital part of your recorded document.  
Please retain with original document and submit for rerecording.



Wake County Register of Deeds  
Laura M. Riddick  
Register of Deeds

North Carolina - Wake County

The foregoing certificate 5 of \_\_\_\_\_

Eleanor L. Stokes.  
Sharon Brundage

\_\_\_\_ Notary(ies) Public is (are) certified to be correct. This instrument and this certificate are duly registered at the date and time and in the book and page shown on the first page hereof.

Laura M. Riddick, Register of Deeds

By: Joe B. Quinn  
Assistant/Deputy Register of Deeds

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