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WAKE COUNTY, NC 1113
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REGISTER OF DEEDS
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**DECLARATION
OF COVENANTS, CONDITIONS, AND RESTRICTIONS
FOR
WESTHAVEN TOWNHOMES**

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"A"	Land Initially Submitted	1
"B"	Initial Use Restrictions and Rules	26
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**DECLARATION
OF COVENANTS, CONDITIONS, AND RESTRICTIONS
FOR
WESTHAVEN TOWNHOMES**

THIS DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS is made this ____ day of August, 2002, by Episcopal Housing Ministry, a North Carolina Nonprofit corporation (the "Declarant").

Declarant submits to this Declaration the real property described in **Exhibit "A."** By this Declaration, Declarant imposes upon the Property (as defined in Article I below) mutually beneficial restrictions under a general plan of improvement for the benefit of the owners of each portion of the Property, and establishes a flexible and reasonable procedure for the overall development, administration, maintenance and preservation of the Properties. In furtherance thereof, Declarant has caused Westhaven Townhomes Homeowners' Association to be formed as a North Carolina nonprofit corporation to own, operate and maintain Common Areas, as defined below, and to administer and enforce the provisions of this Declaration, the By-Laws, and use restrictions and rules promulgated pursuant to this Declaration.

Declarant desires to provide for a system whereby all the Owners will pay for the maintenance and upkeep of the Common Areas.

Declarant hereby declares that all of the property described in **Exhibit "A"** shall be held, sold, used, and conveyed subject to the following easements, restrictions, covenants and conditions which shall run with the title to the real property subjected to this Declaration. This Declaration shall be binding upon all parties having any right, title, or interest in any portion of the Properties, their heirs, successors, successors-in-title, and assigns, and shall inure to the benefit of each owner of any portion of the Property.

This document does not and is not intended to create a condominium within the meaning of the North Carolina Condominium Act, N.C. Gen. Stat. §47C-1-101, et seq.

**Article I
DEFINITIONS**

The terms in this Declaration and the attached exhibits shall generally be given their natural, commonly accepted definitions except as otherwise specified. Capitalized terms shall be defined as set forth below.

1.1. "Annual Assessment": Assessment levied on all Units subject to assessment under **Article VII** to fund Common Expenses as more particularly described in **Article VII**.

1.2. "Area of Common Responsibility": The Common Area, together with such other areas for which the Association has or assumes responsibility pursuant to the terms of this Declaration or other applicable covenants, contract, or agreement.

1.3. "Articles of Incorporation" or "Articles": The Articles of Incorporation of the Association, as filed with the Secretary of State of North Carolina.

1.4. "Association": Westhaven Townhomes Homeowners' Association, a North Carolina nonprofit corporation, its successors or assigns which Association shall be incorporated no later than the date the first Unit is conveyed to a party other than Declarant.

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- 1.5. "Board of Directors" or "Board": The body responsible for administration of the Association, selected as provided in the By-Laws and generally serving the same role as the board of directors under North Carolina corporate law.
- 1.6. "Buildings": Shall mean the buildings to be constructed upon the Property by or at the direction of the Developer.
- 1.7. "By-Laws": The By-Laws of the Association, attached as **Exhibit "C,"** as they may be amended.
- 1.8. "Class "B" Control Period": The period of time during which the Class "B" Member is entitled to appoint a majority of the members of the Board of Directors as provided in Section 3.3 of the By-Laws.
- 1.9. "Common Area": All real and personal property, including easements, which the Association owns, leases or otherwise holds possessory or use rights in for the common use and enjoyment of the Owners, including without limitation any open areas indicated on the Plat.
- 1.10. "Common Expenses": The actual and estimated expenses incurred, or anticipated to be incurred, by the Association, including any reasonable reserve, as the Board may find necessary and appropriate pursuant to this Declaration, the By-Laws and the Articles of Incorporation. Common Expenses shall not include any expenses incurred during the Class "B" Control Period for initial development, original construction, installation of infrastructure, original capital improvements, or other original construction costs unless approved by Members representing a majority of the total Class "A" vote of the Association.
- 1.11. "Community-Wide Standard": The standard of conduct, maintenance, or other activity generally prevailing throughout the Properties at the time the Buildings are first constructed. Such standard may be more specifically determined by the Board of Directors.
- 1.12. "Declarant": Episcopal Housing Ministry, a North Carolina nonprofit corporation, or any successor, successor-in-title, or assign who takes title to any portion of the property described on **Exhibit "A"** for the purpose of development and/or sale and who is designated as the Declarant in a recorded instrument executed by the immediately preceding Declarant.
- 1.13. "Developer": Shall mean Declarant, the developer and builder of the Buildings and improvements on the Property or any portion thereof, and its successors and assigns.
- 1.14. "Development": Shall mean and refer to Westhaven Townhomes, a multi-family residential development proposed to be developed on the Property by Declarant.
- 1.15. "General Assessment": Assessments levied on all Units subject to assessment under **Article VII** to fund Common Expenses for the general benefit of all Units, as more particularly described in **Sections 7.1 and 7.3.**
- 1.16. "Governing Documents": A collective term referring to this Declaration and the Bylaws, the Articles, and the Use Restrictions and Rules, as they may be amended.
- 1.17. "Map": Shall mean and refer to (i) the map of the Development recorded in Map Book 2002, Page 1270 in the Public Records, (ii) any additional maps of any of the Property recorded after the date hereof, and (iii) any revisions, supplements or amendments of such map or maps recorded in such office.

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- 1.18. "Member": A Person subject to membership in the Association pursuant to **Section 3.2**.
- 1.19. "Mortgage": A mortgage, a deed of trust, a deed to secure debt, or any other form of security instrument affecting title to any Unit.
- 1.20. "Mortgagee": A beneficiary or holder of a Mortgage.
- 1.21. "Mortgagor": Any Person who gives a Mortgage.
- 1.22. "Owner": One or more Persons who hold the record title to any Unit, but excluding in all cases any party holding an interest merely as security for the performance of an obligation. If a Unit is sold under a recorded contract of sale, and the contract specifically so provides, the purchaser (rather than the fee owner) will be considered the Owner.
- 1.23. "Person": A natural person, a corporation, a partnership, a trustee, or any other legal entity.
- 1.24. "Plat": The plat or declaration filed in the Public Records with respect to the Property, as revised from time to time, and initially shall mean the plat recorded in Book 2002, Page 1270 in the Public Records.
- 1.25. "Property": The real property described on **Exhibit "A"**.
- 1.26. "Public Records": The Office of the Register of Deeds for Wake County, North Carolina.
- 1.27. "Special Assessment": Assessments levied in accordance with **Section 7.5**.
- 1.28. "Unit": A townhouse unit located within any of the Buildings on the Property, which may be independently owned and conveyed and which is intended for occupancy by a single family. The term shall include within its meaning, by way of illustration but not limitation, each numbered unit shown on any plat or declaration filed in the Public Records with respect to the Property, but shall not include Common Areas or property dedicated to the public.

If a portion of the Property consists of a parcel of vacant land or land on which improvements are under construction, but for which a subdivision plat subdividing such vacant land into individual Buildings has not been recorded, then such parcel shall be deemed to contain the number of Units designated for residential use for such parcel on the site plan for the Property approved by Declarant (a copy of which Declarant shall make available for each Member's inspection), until such time as a certificate of occupancy is issued on all or a portion thereof by the local governmental entity having jurisdiction. After issuance of a certificate of occupancy on any portion thereof, the portion designated in the certificate of occupancy shall constitute a separate Unit or Units as determined above and the number of Units on the remaining portion of the Properties shall continue to be determined in accordance with this paragraph.

Ownership of adjacent Units by the same Owner shall not, in the absence of recording of a new or revised plat in the Public Records, permit such Units to be treated as a single Unit for purposes of voting and assessment, notwithstanding that such Units may be improved with a single dwelling.

Article II

PROPERTY RIGHTS

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2.1. Common Area. Every Owner shall have a right and nonexclusive easement of use, access, and enjoyment in and to the Common Area, subject to:

- (a) This Declaration and any other applicable covenants;
- (b) Any restrictions or limitations contained in any deed(s) conveying the Common Area to the Association;
- (c) The right of the Board to adopt rules regulating the use and enjoyment of the Common Area;
- (d) The right, but not the obligation, of the Board to provide uniform assigned parking privileges, if any, to Owners in the parking lots located in the Common Areas;
- (e) The right of the Association, acting through the Board, to dedicate or transfer all or any part of the Common Area subject to Section 2.4 and the requirements of North Carolina General Statutes Section 47F-3-112 as may be amended; and
- (f) The right of the Association following satisfaction of the requirements of North Carolina General Statute Section 47F-3-112, as may be amended, acting through the Board, to mortgage, pledge, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred.

2.2. No Partition. Except as permitted in this Declaration, there shall be no judicial partition of the Common Area. No Person shall seek any judicial partition unless the portion of the Common Area which is the subject of such partition action has been removed from the provisions of this Declaration. This Article shall not prohibit the Board from acquiring and disposing of tangible personal property nor from acquiring and disposing of real property which may or may not be subject to this Declaration.

2.3. Condemnation. If any part of the Common Area shall be taken (or conveyed in lieu of or under threat of condemnation by the Board acting on the written direction of Members representing at least 67% of the total Class "A" votes in the Association and of the Declarant, as long as the Declarant owns any property described on Exhibit "A") by any authority having the power of condemnation or eminent domain, the Association shall mail written notice to each Owner within 10 days after such taking or conveyance notifying them of such fact, identifying the property so taken or conveyed and stating whether such taking or conveyance involved any improvements. The award made for such taking shall be payable to the Association as trustee for all Owners to be disbursed as follows:

If the taking involves a portion of the Common Area on which improvements have been constructed, the Association shall restore or replace such improvements on the remaining land included in the Common Area to the extent available, unless within 60 days after such taking the Declarant, so long as the Declarant owns any property described in Exhibit "A" of this Declaration, and Members representing at least 75% of the total Class "A" vote of the Association shall otherwise agree. Any such construction shall be in accordance with plans approved by the Board. The provisions of Section 6.1(c) regarding funds for the repair of damage or destruction shall apply.

If the taking does not involve any improvements on the Common Area, or if a decision is made not to repair or restore, or if net funds remain after any such restoration or replacement is complete, then such award or net funds shall be disbursed to the Association and used for such purposes as the Board shall determine.

2.4. Actions Requiring Owner Approval. If either the U.S. Department of Housing and Urban Development or the U.S. Department of Veterans Affairs is insuring or guaranteeing the Mortgage on any Unit, then the following actions shall require the prior approval of Members representing not less than two-thirds

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(2/3) of the total Class "A" votes in the Association and the consent of the Class "B" Member, if such exists: merger, consolidation or dissolution of the Association; annexation of additional property; and dedication, conveyance or mortgaging of Common Area except as otherwise provided in Section 4.6. Notwithstanding anything to the contrary in Section 2.3 or this Section, the Association, acting through the Board, may grant easements over the Common Area for installation and maintenance of utilities and drainage facilities and for other purposes not inconsistent with the intended use of the Common Area, without the approval of the membership.

Article III MEMBERSHIP AND VOTING RIGHTS

3.1. Function of Association. The Association shall be the entity responsible for management, maintenance, operation and control of the Area of Common Responsibility. The Association shall be the primary entity responsible for enforcement of this Declaration and such reasonable rules regulating use of the Property as the Board or the membership may adopt pursuant to Article VIII. The Association shall perform its functions in accordance with this Declaration, the By-Laws, the Articles and the laws of the State of North Carolina.

3.2. Membership. Every Owner shall be a Member of the Association and only Owners may be Members. There shall be only one membership per Unit. If a Unit is owned by more than one Person, all co-Owners shall share the privileges of such membership, subject to reasonable Board regulation and the restrictions on voting set forth in Section 3.3(c) and in the By-Laws, and all such co-Owners shall be jointly and severally obligated to perform the responsibilities of Owners. The membership rights of an Owner which is not a natural person may be exercised by any officer, director, partner, or trustee, or by the individual designated from time to time by the Owner in a written instrument provided to the Secretary of the Association.

3.3. Voting. The Association shall have two classes of membership, Class "A" and Class "B."

(a) Class "A". Class "A" Members shall be all Owners except the Class "B" Member, if any.

Class "A" Members shall have one (1) equal vote for each Unit in which they hold the interest required for membership under Section 3.2; provided, there shall be only one (1) vote per Unit and no vote shall be exercised for any property which is exempt from assessment under Section 7.9. All Class "A" votes shall be cast as provided in Section 3.3(c) below.

(b) Class "B". The sole Class "B" Member shall be the Declarant. The rights of the Class "B" Member, including the right to approve, or withhold approval of, actions proposed under this Declaration, the By-Laws and the Articles, are specified in the relevant sections of this Declaration, the By-Laws and the Articles. The Class "B" Member may appoint a majority of the Members of the Board of Directors during the Class "B" Control Period, as specified in Section 3.3 of the By-Laws. After termination of the Class "B" Control Period, the Class "B" Member shall have a right to disapprove actions of the Board and committees as provided in Section 3.19 of the By-Laws.

(c) Exercise of Voting Rights. In any situation where there is more than one Owner of a Unit, the vote for such Unit shall be exercised as the co-Owners determine among themselves and advise the Secretary of the Association in writing prior to the vote being taken. Absent such advice, the Unit's vote shall be suspended if more than one Person seeks to exercise it.

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Article IV
RIGHTS AND OBLIGATIONS OF THE ASSOCIATION

4.1. **Common Area.** The Association, subject to the rights of the Owners set forth in this Declaration, shall manage and control the Common Area and all improvements thereon (including, without limitation, furnishings, equipment, improvements and other personal property of the Association used in connection with the Common Areas), and shall keep it in good and clean condition, and in good repair, pursuant to this Declaration and the By-Laws and consistent with the Community-Wide Standard. The Board is specifically authorized, but not obligated, to retain or employ professional management to assist in carrying out the Association's responsibilities under this Declaration, the cost of which shall be a Common Expense.

4.2. **Personal Property and Real Property for Common Use.** The Association, through action of its Board, may acquire, hold, and dispose of tangible and intangible personal property and real property, subject to the provisions of Sections 2.4 and 10.4. The Declarant and its designees may convey to the Association improved or unimproved real estate, or interests in real estate, located within the properties described in Exhibit "A," personal property and leasehold and other property interests. Such property shall be accepted by the Association and thereafter shall be maintained by the Association at its expense for the benefit of its Members, subject to any restrictions set forth in the deed or other instrument transferring such property to the Association.

4.3. **Enforcement.** The Association may impose sanctions for violations of this Declaration, the Bylaws, or Association rules in accordance with procedures set forth in the By-Laws, including reasonable monetary fines and suspension of the right to vote. In addition, in accordance with Section 3.24 of the By-Laws, the Association may exercise self-help to cure violations and may suspend any services it provides to the Unit of any Owner who is more than 30 days delinquent in paying any assessment or other charge due to the Association. All remedies set forth in this Declaration and the By-Laws shall be cumulative of any remedies available at law or in equity. In any action to enforce the provisions of this Declaration or Association rules, if the Association prevails it shall be entitled to recover all costs, including, without limitation, attorneys' fees and court costs, reasonably incurred in such action.

The Association shall not be obligated to take action to enforce any covenant, restriction or rule which the Board reasonably determines is, or is likely to be construed as, inconsistent with applicable law, or in any case in which the Board reasonably determines that the Association's position is not strong enough to justify taking enforcement action. Any such determination shall not be construed as a waiver of the right to enforce such provision under other circumstances or estop the Association from enforcing any other covenant, restriction, or rule.

The Association, by contract or other agreement, may, but shall not be obligated to, enforce county and city ordinances, if applicable, and permit local governments to enforce their ordinances within the Property for the benefit of the Association and its Members.

4.4. **Implied Rights; Board Authority.** The Association may exercise any right or privilege given to it expressly by this Declaration or the By-Laws, or reasonably implied from or reasonably necessary to effectuate any such right or privilege. Except as otherwise specifically provided in this Declaration, the By-Laws, the Articles, or by law, all rights and powers of the Association may be exercised by the Board without a vote of the membership.

4.5. **Indemnification.** The Association shall indemnify every officer, director, and committee member against all damages and expenses, including counsel fees, reasonably incurred in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board of Directors) to which he or she may be a party by reason of being or having been an officer, director, or

committee member, except that such obligation to indemnify shall be limited to those actions for which liability is limited under this Section and North Carolina law.

The officers, directors, and committee members shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, misconduct, or bad faith. The officers and directors shall have no personal liability with respect to any contract or other commitment made or action taken in good faith on behalf of the Association (except to the extent that such officers or directors may also be Members of the Association). The Association shall indemnify and forever hold each such officer, director, and committee member harmless from any and all liability to others on account of any such contract, commitment, or action. This right to indemnification shall not be exclusive of any other rights to which any present or former officer, director, or committee member may be entitled. The Association shall, as a Common Expense, maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such insurance is reasonably available.

4.6. Dedication of Common Areas. The Association may dedicate portions of the Common Areas to Wake County, North Carolina, or to any other local, state, or federal governmental or quasi-governmental entity, subject to such approval as may be required by this Section and Section 2.4. This Section 4.6 may not be amended without the Declarant's written consent so long as the Declarant owns any property described on Exhibits "A."

4.7. Security. The Association may, but shall not be obligated to, maintain or support certain activities within the Properties designed to make the Property safer than they otherwise might be. Neither the Association, the original Declarant, nor any successor Declarant shall in any way be considered insurers or guarantors of security within the Properties, nor shall any of them be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken. No representation or warranty is made that any systems or measures cannot be compromised or circumvented, nor that any such systems or measures undertaken will in all cases prevent loss or provide the detection or protection for which the system is designed or intended. Each Owner acknowledges, understands and covenants to inform its tenants and all occupants of its Unit that the Association, its Board of Directors and committees, Declarant, and any successor Declarant are not insurers and that each Person using the Property assumes all risks of personal injury and loss or damage to property, including Units and the contents of Units, resulting from acts of third parties.

Article V

MAINTENANCE

5.1. Association's Responsibility.

(a) The Association shall maintain and keep in good repair the Area of Common Responsibility, which shall include, but need not be limited to:

- (i) all landscaping and other flora, signage, lighting, irrigation systems and equipment, fences, walls, and other structures and improvements, if any, situated upon any portion of the Common Area;
- (ii) landscaping, signage, street lights, and sidewalks within public rights-of-way lying within or adjacent to the Property, except to the extent that such responsibility is assigned to Owners under Section 5.2 or assumed by a governmental or quasi-governmental body or public utility;
- (iii) any bioretention areas or ponds located within the Property;

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- (iv) any ponds, streams and/or wetlands located within the Property which serve as part of the drainage and storm water retention system for the Property;
- (v) the roofs of the Buildings and any Units;
- (vi) all fences installed by the Developer or the Association; and
- (vii) such portions of any additional property included within the Area of Common Responsibility as may be dictated by this Declaration, any supplemental declaration, or any contract or agreement for maintenance thereof entered into by the Association.

The Association may maintain other property which it does not own, including, without limitation, property dedicated to the public, if the Board of Directors determines that such maintenance is necessary or desirable to maintain the Community-Wide Standard.

The Area of Common Responsibility shall not be reduced by amendment of this Declaration or any other means except with the prior written approval of the Declarant as long as the Declarant owns any property described on Exhibit "A" of this Declaration.

(b) There are hereby reserved to the Association easements over the Property as necessary to enable the Association to fulfill such responsibilities.

(c) Except as otherwise specifically provided herein, all costs associated with maintenance, repair, and replacement of the Area of Common Responsibility and all improvements located within the Area of Common Responsibility and the maintenance of utility service, if any, to such area shall be a Common Expense to be allocated among all Units as part of the General Assessment, without prejudice to the right of the Association to seek reimbursement from the owner(s) of, or other Persons responsible for, certain portions of the Area of Common Responsibility pursuant to this Declaration, other recorded covenants, or agreements with the owner(s) thereof.

5.2. Owner's Responsibility. Each Owner shall maintain his or her Unit and all structures and other improvements comprising the Unit. Each Owner shall perform all such maintenance in a manner consistent with the Community-Wide Standard and all applicable covenants, unless such maintenance responsibility is otherwise assumed by or assigned to the Association pursuant to this Declaration, any Supplemental Declaration, or other covenants applicable to such Unit. In addition to any other enforcement rights, if an Owner fails to perform properly his or her maintenance responsibility hereunder, the Association, or the Declarant, if the Association fails to do so, may perform such maintenance responsibilities and assess all costs incurred by the Association or the Declarant, as the case may be, against the Unit and the Owner. The Association or the Declarant, as the case may be, shall afford the Owner reasonable notice and an opportunity to cure the problem prior to entry, except when entry is required due to an emergency situation.

5.3. Standard of Performance. Unless otherwise specifically provided herein or in other instruments creating and assigning such maintenance responsibility, responsibility for maintenance shall include responsibility for repair and replacement, as necessary. All maintenance shall be performed in a manner consistent with the Community-Wide Standard and all applicable covenants. The Association shall not be liable for any damage or injury occurring on, or arising out of the condition of, property which it does not own except to the extent that it has been negligent in the performance of its maintenance responsibilities.

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Article VI
INSURANCE AND CASUALTY LOSSES

6.1. Association Insurance. Commencing not later than the time of the first conveyance of a Unit to a Person other than Declarant, the Association shall maintain, to the extent available, the following insurance coverages:

(a) Required Coverages. The Association, acting through its Board or its duly authorized agent, shall obtain and continue in effect the following types of insurance, if reasonably available, or if not reasonably available, the most nearly equivalent coverages as are reasonably available:

(i) Blanket property insurance covering "risks of direct physical loss" on a "special form" basis (or comparable coverage by whatever name denominated) for all insurable improvements on the Common Area and on other portions of the Area of Common Responsibility to the extent that it has or has assumed responsibility for maintenance, repair, and/or replacement in the event of a casualty. If such coverage is not generally available at reasonable cost, then "broad form" coverage may be substituted. The Association shall have the authority to and interest in insuring any property for which it has maintenance or repair responsibility, regardless of ownership. All property insurance policies obtained by the Association shall have policy limits sufficient to cover the full replacement cost of the insured improvements;

(ii) Commercial general liability insurance on the Area of Common Responsibility, insuring the Association and its Members for damage or injury caused by the negligence of the Association or any of its Members, employees, agents, or contractors while acting on its behalf. If generally available at reasonable cost, the commercial general liability coverage (including primary and any umbrella coverage) shall have a limit of at least \$1,000,000.00 per occurrence with respect to bodily injury, personal injury, and property damage. If the insurance described in (i) and (ii) above is not reasonably available, the Association promptly shall cause notice of that fact to be hand-delivered or sent by prepaid US Mail to all Owners;

(iii) Workers compensation insurance and employers liability insurance, if and to the extent required by law;

(iv) Directors and officers liability coverage;

(v) Fidelity insurance covering all Persons responsible for handling Association funds in an amount determined in the Board's best business judgment but not less than an amount equal to one-sixth of the annual General Assessments on all Units plus reserves on hand. Fidelity insurance policies shall contain a waiver of all defenses based upon the exclusion of Persons serving without compensation; and

(vi) Such additional insurance as the Board, in its best business judgment, determines advisable.

(b) Policy Requirements. The policies may contain a reasonable deductible and the amount thereof shall not be subtracted from the face amount of the policy in determining whether the policy limits satisfy the requirements of Section 6.1(a). In the event of an insured loss, the deductible shall be treated as a Common Expense; provided, if the Board reasonably determines, after notice and an opportunity to be heard in accordance with Section 3.24 of the By-Laws, that the loss is the result of the negligence or willful misconduct of one or more Owners, their guests, invitees, or lessees, then the Board may specifically assess the full amount of such deductible against such Owner(s) and their Units.

All insurance coverage obtained by the Board shall:

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(i) be written with a company authorized to do business in the State of North Carolina which satisfies the requirements of the Federal National Mortgage Association, or such other secondary mortgage market agencies or federal agencies as the Board deems appropriate;

(ii) be written in the name of the Association as trustee for the benefited parties. Policies on the Common Areas shall be for the benefit of the Association and its Members;

(iii) not be brought into contribution with insurance purchased by Owners, occupants, or their Mortgagees individually;

(iv) contain an inflation guard endorsement; and

(v) include an agreed amount endorsement, if the policy contains a co-insurance clause.

In addition to the above, all insurance coverage obtained by the Board pursuant to Section 6.1(a)(i) and (a)(ii) shall provide that:

(i) each Owner is an Insured Person under the policy to the extent of each Owner's insurable interest;

(ii) the insurer waives its rights to subrogation under the policy against any Owner or Member of the Owner's household;

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

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

(v) the insurer shall issue certificates or memoranda of insurance to the association, and upon written request, to any Owner, Mortgagee or beneficiary under a Deed of Trust;

(vi) the insurer issuing the policy may not cancel or refuse to cancel or renew the policy until 30 days after notice of the proposed cancellation or non-renewal has been mailed to the Association, each Owner and each Mortgagee or beneficiary under a deed of trust to whom certificates or memoranda to whom certificates of insurance have been issued at their respective last known addresses.

In addition, the Board shall use reasonable efforts to secure insurance policies which list the Owners as additional insureds and provide:

(i) a waiver of subrogation as to any claims against the Association's Board, officers, employees, and its manager, the Owners and their tenants, servants, agents, and guests;

(ii) a waiver of the insurer's rights to repair and reconstruct instead of paying cash;

(iii) an endorsement precluding cancellation, invalidation, suspension, or non-renewal by the insurer on account of any one or more individual Owners, or on account of any curable defect or violation without prior written demand to the Association to cure the defect or violation and allowance of a reasonable time to cure;

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(iv) an endorsement excluding Owners' individual policies from consideration under any "other insurance" clause;

(v) an endorsement requiring at least 30 days' prior written notice to the Association of any cancellation, substantial modification, or non-renewal;

(vi) a cross liability provision; and

(vii) a provision vesting in the Board exclusive authority to adjust losses; provided, however, no Mortgagee having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related to the loss.

(c) Damage and Destruction. Immediately after damage or destruction to all or any part of the property covered by insurance written in the name of the Association, the Board or its duly authorized agent shall file and adjust all insurance claims and obtain reliable and detailed estimates of the cost of repair or reconstruction. Repair or reconstruction, as used in this paragraph, means repairing or restoring the property to substantially the condition in which it existed prior to the damage, allowing for changes or improvements necessitated by changes in applicable building codes.

Any damage to or destruction of the Common Area shall be repaired or reconstructed unless the Members representing at least 80% of the total votes in the Association, and decide within 60 days after the loss not to repair or reconstruct.

If either the insurance proceeds or reliable and detailed estimates of the cost of repair or reconstruction, or both, are not available to the Association within such 60-day period, then the period shall be extended until such funds or information are available. However, such extension shall not exceed 60 additional days. No Mortgagee shall have the right to participate in the determination of whether the damage or destruction to the Common Area shall be repaired or reconstructed.

If determined in the manner described above that the damage or destruction to the Common Area shall not be repaired or reconstructed and no alternative improvements are authorized, the affected property shall be cleared of all debris and ruins and thereafter shall be maintained by the Association in a neat and attractive, landscaped condition consistent with the Community-Wide Standard and the insurance proceeds shall be used to pay for such work.

Any insurance proceeds remaining after paying the costs of repair or reconstruction or clearing the Common Area of debris and ruins, or after such settlement as is necessary and appropriate, shall be distributed to all the Owners or lienholders, as their interests may appear, in proportion to the Common Expense liabilities of all the Units. This is a covenant for the benefit of Mortgagees and may be enforced by the Mortgagee of any affected Unit.

If insurance proceeds are insufficient to cover the costs of repair or reconstruction, the Board of Directors may, without a vote of the Members, levy a Special Assessment to cover the shortfall.

6.2. Owners' Insurance. Each Owner shall be responsible for insuring its own Unit. Each such policy shall name the Association as an additional Insured Person to the extent of the Association's insurable interest, and provide that the policy may not be cancelled until 30 days after notice of the proposed cancellation or non-renewal has been mailed to the Association. Upon request of the Association, the insurer shall issue certificates or memoranda of insurance to the Association. In the event of damage or destruction of structures on or comprising a Unit, the Owner shall, within 180 days thereafter, complete repair or reconstruction of the

damaged structures in a manner consistent with the original construction. The Owner shall pay any costs not covered by insurance proceeds.

Article VII **ASSESSMENTS**

7.1. Creation of and Obligation for Assessments.

(a) **Purposes and Types.** There are hereby created, and the Association is hereby authorized to levy assessments for expenses incurred or anticipated to be incurred by the Association in performing its responsibilities and exercising its rights and powers under this Declaration, the Articles and the By-Laws, specifically including but not limited to: expenses of maintaining, repairing, replacing, improving, operating, and insuring the Area of Common Responsibility and all improvements located thereon, including amounts due to third parties who perform such tasks on behalf of the Association, and the costs of labor, equipment, materials, management, supervision and utilities; taxes, if any, imposed on the Association or the Common Area; the cost of insurance and fidelity bond coverage obtained pursuant to **Article VI**; expenses of monitoring and enforcing compliance with the provisions of this Declaration and all exhibits hereto and all instruments referenced herein; expenses arising out of the Association's indemnification obligations under **Section 4.5**; expenses arising out of any measure undertaken to enhance the safety of the Owners and occupants of Units and the Property pursuant to **Section 4.7**; expenses of managing the Association, including compensation of management personnel, maintaining books and records, handling Association funds, providing financial reports, and corresponding with Members; administrative expenses such as postage, copying expense, office supplies and equipment; legal, accounting, and other professional fees; and such other expenses as the Board deems necessary or desirable to keep the Property in good, clean, and attractive condition and to maintain and enhance property values and marketability of Units within the Properties. Such assessments shall commence at the time and in the manner set forth in **Section 7.7**.

There shall be two types of assessments: (a) General Assessments as described in **Section 7.3**; and (b) Special Assessments as described in **Section 7.5**. Each Owner, by accepting a deed or entering into a recorded contract of sale for any Unit, is deemed to covenant and agree to pay these assessments.

(b) **Personal Obligation and Lien.** All assessments, together with interest (computed from the due date of such assessment at a rate of 18% per annum or such higher rate as the Board may establish, subject to the limitations of North Carolina law), late charges in such amount as the Board may establish by resolution (subject to the limitations of North Carolina law), costs, and reasonable attorneys' fees, shall be a charge and continuing lien upon each Unit against which the assessment is made until paid, as more particularly provided in **Section 7.6**. Each such assessment, together with interest, late charges, costs and reasonable attorneys' fees, also shall be the personal obligation of the Person who was the Owner of such Unit at the time the assessment arose. Upon a transfer of title to a Unit, the grantee shall be jointly and severally liable for any assessments and other charges due at the time of conveyance. However, no first Mortgagee who obtains title to a Unit by exercising the remedies provided in its Mortgage shall be liable for unpaid assessments which accrued prior to such acquisition of title.

The Association shall, upon request, furnish to any Owner liable for any type of assessment a certificate in writing signed by an Association officer setting forth whether such assessment has been paid. Such certificate shall be conclusive evidence of payment. The Association may require the advance payment of a reasonable processing fee for the issuance of such certificate.

Assessments shall be paid in such manner and on such dates as the Board may establish, which may include discounts for early payment or similar time/price differentials. The Board may require advance

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payment of assessments at closing of the transfer of title to a Unit and impose special requirements for Owners with a history of delinquent payment. The General Assessment shall be an annual assessment due and payable in such manner and in such installments as may be uniformly prescribed by the Board from time to time. If any Owner is delinquent in paying any assessments or other charges levied on his Unit, the Board may require any unpaid installments of all outstanding assessments to be paid in full immediately. The Board may also establish uniform late fees for dues or assessments not received by the due date or any grace period specified by the Board therefor, as well as fees for any returned checks. Any dues, assessments, or other charges delinquent after 90 days may be turned over to an attorney for collection, and the delinquent Owner will be responsible for all legal fees incurred to collect the delinquent dues, assessments, or other charges.

No Owner may exempt himself from liability for assessments by non-use of Common Area, abandonment of his Unit, or any other means. The obligation to pay assessments is a separate and independent covenant on the part of each Owner. No diminution or abatement of assessments or set-off shall be claimed or allowed for any alleged failure of the Association or Board to take some action or perform some function required of it, or for inconvenience or discomfort arising from the making of repairs or improvements, or from any other action it takes.

The Association is specifically authorized to enter into subsidy contracts or contracts for "in kind" contribution of services, materials, or a combination of services and materials with the Declarant or other entities for payment of Common Expenses.

7.2. Declarant's Obligation for Assessments. During the Class "B" Control Period, Declarant may annually elect either to pay the assessments which otherwise would be levied on its unsold Units pursuant to Section 7.7 or to pay the difference between the amount of assessments levied on all other Units subject to assessment and the amount of actual expenditures by the Association during the fiscal year; provided, regardless of the Declarant's election, the Declarant's Units shall be considered in computing the General Assessment rate under Section 7.3. Unless the Declarant otherwise notifies the Board in writing at least 60 days before the beginning of each fiscal year, the Declarant shall be deemed to have elected to continue paying on the same basis as during the immediately preceding fiscal year. The Declarant's obligations hereunder may be satisfied in the form of cash or by "in kind" contributions of services or materials, or by a combination of these. After termination of the Class "B" Control Period, the Declarant shall pay assessments on its unsold Units in the same manner as any other Owner in accordance with the applicable rate of assessment under Section 7.7.

7.3. Computation of General Assessments.

(a) At least 30 days before the beginning of each fiscal year, the Board shall prepare a budget covering the estimated Common Expenses during the coming year, including a capital contribution to establish a reserve fund in accordance with a budget separately prepared as provided in Section 7.4.

Except as otherwise provided in Section 7.7, General Assessments shall be fixed at a uniform rate for all Units. Subject to the provisions of this Section 7.3, such assessment rate shall be set at a level which is reasonably expected to produce total income for the Association equal to the total budgeted Common Expenses, including reserves. In determining the total funds to be generated through the levy of General Assessments, the Board, in its discretion, may consider other sources of funds available to the Association, including any surplus from prior years, any assessment income expected to be generated from any additional Units reasonably anticipated to become subject to partial or full assessment during the fiscal year.

The Board shall within thirty (30) days following the Board's adoption of a proposed budget for the Association, mail a summary of such proposed budget to each Owner at the mailing address of each Unit or any other mailing address designated in writing by an Owner. In such notice, the Board shall specify the date and time of the meeting of the Association to consider ratification of such proposed budget and such notice shall

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also note that the proposed budget may be ratified at the meeting regardless of whether or not a quorum of the Members are present at such meeting. The meeting called for in such notice shall be no less than ten (10) nor more than sixty (60) days following the mailing of the budget summary and the notice of meeting. The budget proposed by the Board shall automatically be deemed ratified at such meeting unless at such meeting, a majority of all the Members in the Association rejects the budget. If the proposed budget is rejected, the periodic budget last ratified by the Members shall be continued until such time as the Owners ratify a subsequent budget proposed by the Board. In addition to Member approval of the budget as provided above, if the proposed General Assessment set forth in the budget would exceed the applicable Maximum General Assessment, the proposed General Assessment shall become effective only upon approval by 67% of the Class "A" votes represented at a duly called meeting of the membership at which a quorum is present, and the consent of the Class "B" Member. If a quorum is not present at the meeting when originally called, a second meeting may be called and the quorum for the second meeting shall be reduced to one-half of the quorum originally required.

(b) The maximum General Assessment which may be levied on any Unit without a vote of the membership shall be \$725.00 for each calendar year. The maximum General Assessments as set forth above, and shall automatically increase for each subsequent fiscal year by 10% or the percentage increase in the Consumer Price Index during the previous fiscal year, whichever is greater (the "Maximum General Assessment"). The "Consumer Price Index" shall refer to the Consumer Price Index of the Bureau of Labor Statistics of the U.S. Department of Labor for All Urban Consumers (South Region; Base: 1982-84 = 100). If the compilation and/or publication of the CPI shall be substantially revised, transferred to any other governmental department or bureau or agency or shall be discontinued, then the index (or a substitute procedure which reasonably reflects and monitors fluctuations in consumer prices) most nearly the same as the CPI shall be used to make the calculations envisioned herein, or in the event no such alternative index exists or a dispute arises concerning the selection of such alternative index, the Board shall have the final right and power to select and/or formulate such an alternate index. The Maximum General Assessment for any year may be increased by an amount greater than that set forth above with the assent of at least 67% of the Class "A" votes represented at a duly called meeting of the membership at which a quorum is present and the consent of the Class "B" Member.

7.4. Reserve Budget and Capital Contribution. The Board shall annually prepare a reserve budget which takes into account the number and nature of replaceable assets, if any, within the Area of Common Responsibility, the expected life of each asset, and the expected repair or replacement cost. The Board shall set the required capital contribution in an amount sufficient to permit meeting the projected needs of the Association, as shown on the budget, with respect both to amount and timing by annual General Assessments over the budget period.

7.5. Special Assessments. In addition to other authorized assessments, the Association may levy Special Assessments from time to time to cover unbudgeted expenses or expenses in excess of those budgeted. Except as otherwise specifically provided in this Declaration, any Special Assessment which, when combined with the General Assessment, would result in payments due in any fiscal year in excess of the Maximum General Assessment permitted for such fiscal year, shall require the affirmative vote or written consent of Members representing a majority of the total Class "A" votes in the Association, and the affirmative vote or written consent of the Class "B" Member, if such exists. Special Assessments shall be payable in such manner and at such times as determined by the Board, and may be payable in installments extending beyond the fiscal year in which the Special Assessment is approved. Except as otherwise provided in Section 7.7, Special Assessments shall be levied equally on all Units.

7.6. Lien for Assessments. Pursuant to N.C.G.S. 47F-3-116, the Association shall have a lien against each Unit to secure payment of assessments which are not paid within thirty (30) days of their due date, as well as fees, fines, interest, late charges and other charges (subject to the limitations of North Carolina law) imposed pursuant to N.C.G.S. 47F-3-102, 107, 107A and 115 and costs of collection (including attorneys' fees) upon

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filing by the Association of a claim of lien in the office of the clerk of court in the County where the Unit is located. A claim of lien shall set forth the name and address of the Association, the name of the record owner of the Unit at the time the claim of lien is filed, a description of the Unit, and the amount of the lien claimed. Such lien shall be superior to all other liens, except (a) the liens of all taxes, bonds, assessments, and other levies which by law would be superior, and (b) the lien or charge of any first Mortgage of record (meaning any recorded Mortgage with first priority over other Mortgages) made in good faith and for value. Such lien, when delinquent, may be enforced by suit, judgment, and foreclosure in the same manner as mortgages are foreclosed under North Carolina law.

The Association may bid for the Unit at the foreclosure sale and acquire, hold, lease, mortgage, and convey the Unit. While a Unit is owned by the Association following foreclosure: (a) no right to vote shall be exercised on its behalf; (b) no assessment shall be levied on it; and (c) each other Unit shall be charged, in addition to its usual assessment, its pro rata share of the assessment that would have been charged such Unit had it not been acquired by the Association. The Association may sue for unpaid assessments and other charges authorized hereunder without foreclosing or waiving the lien securing the same.

The sale or transfer of any Unit shall not affect the assessment lien or relieve such Unit from the lien for any subsequent assessments. However, the sale or transfer of any Unit pursuant to foreclosure of the first Mortgage shall extinguish the lien as to any installments of such assessments due prior to such sale or transfer except to the extent that North Carolina law grants priority over Mortgages to liens of owners associations such as the Association. A Mortgagee or other purchaser of a Unit who obtains title pursuant to foreclosure of the Mortgage shall not be personally liable for assessments on such Unit due prior to such acquisition of title except to the extent of any priority granted to the Association's lien by North Carolina law. Such unpaid assessments shall be deemed to be Common Expenses collectible from Owners of all Units subject to assessment under this Declaration, including such acquirer, its successors and assigns.

7.7. Date of Commencement of Assessments. The obligation to pay assessments shall commence as to each Unit on the first day of the first calendar month following the calendar month in which the Unit is made subject to this Declaration, as described in Section 1.28. Notwithstanding the above, until the first day of the first calendar month following the calendar month in which a particular Unit is first occupied for residential purposes, such Unit shall be assessed only one-tenth (1/10) of the full General Assessment rate and shall pay only one-tenth (1/10) of any Special Assessment which would otherwise be payable during such period. The first annual General Assessment levied on each Unit, whether levied at the partial or full rate, shall be adjusted according to the number of months remaining in the fiscal year at the time assessments commence on the Unit.

7.8. Failure to Assess. Failure of the Board to fix assessment amounts or rates or to deliver or mail each Owner an assessment notice shall not be deemed a waiver, modification, or a release of any Owner from the obligation to pay assessments. In such event, each Owner shall continue to pay General Assessments on the same basis as during the last year for which an assessment was made, if any, until a new assessment is levied, at which time the Association may retroactively assess any shortfalls in collections.

7.9. Exempt Property. The following property shall be exempt from payment of assessments:

- (a) All Common Area and such portions of the property owned by the Declarant as are included in the Area of Common Responsibility pursuant to Section 5.1; and
- (b) Any property dedicated to and accepted by any governmental authority or public utility.

ARTICLE VIII

Article VIII

USE RESTRICTIONS AND RULES

8.1. Plan of Development; Applicability; Effect. Declarant has established a general plan of development for the Property as a master planned community in order to enhance all Owners' quality of life and collective interests, the aesthetics and environment within the Property, and the vitality of and sense of community within the Property, all subject to the Board's and the Members' ability to respond to changes in circumstances, conditions, needs, and desires within the master planned community and to regulate and control the Area of Common Responsibility. The Property is subject to the provisions of this Declaration governing individual conduct and uses of or actions upon the Property, and the guidelines, rules, and restrictions promulgated pursuant to this Declaration, all of which establish affirmative and negative covenants, easements, and restrictions on the land subject to this Declaration.

All provisions of this Declaration and any Association rules shall apply to all Owners, occupants, tenants, guests and invitees of any Unit. Any lease on any Unit shall provide that the lessee and all occupants of the leased Unit shall be bound by the terms of this Declaration, the By-Laws and the rules of the Association.

8.2. Authority to Promulgate Use Restrictions and Rules. Initial use restrictions applicable to all of the Properties are attached as **Exhibit "B"** to this Declaration. Subject to the terms of this Article, such initial use restrictions may be modified in whole or in part, repealed or expanded as follows:

(a) Subject to the Board's duty to exercise sound business judgment and reasonableness on behalf of the Association and its Members, the Board may adopt rules which modify, cancel, limit, create exceptions to, or expand the initial use restrictions set forth on **Exhibit "B."** The Board shall send notice by mail to all Owners concerning any such proposed action at least 5 business days prior to the Board meeting at which such action is to be considered. Members shall have a reasonable opportunity to be heard at a Board meeting prior to such action being taken.

Such action shall become effective unless disapproved at a meeting by Members representing a majority of the total Class "A" votes and by the Class "B" Member, if any. The Board shall have no obligation to call a meeting of the Members to consider disapproval except upon petition of the Members as required for special meetings in the By-Laws.

(b) Alternatively, the Members, at a meeting duly called for such purpose as provided in the By-Laws, may adopt rules which modify, cancel, limit, create exceptions to, or expand the use restrictions and rules previously adopted by a vote of the Members representing a majority of the total Class "A" votes in the Association and the approval of the Class "B" Member, if any.

(c) At least 30 days prior to the effective date of any action taken under subsections (a) or (b) of this Section, the Board shall send a copy of the rule to each Owner. The Association shall provide, without cost, a copy of the use restrictions and rules then in effect (hereafter the "Use Restrictions and Rules") to any requesting Member or Mortgagee.

8.3. Owners' Acknowledgment. All Owners and occupants of Units are given notice that use of their Units is limited by the Use Restrictions and Rules as they may be amended, expanded, and otherwise modified hereunder. Each Owner, by acceptance of a deed, acknowledges and agrees that the use and enjoyment and marketability of his or her Unit can be affected and that the Use Restrictions and Rules may change from time to time.

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8.4. Rights of Owners. Except as may be specifically set forth in this Declaration (either initially or

by amendment) or in Exhibit "B," neither the Board nor the Members may adopt any rule in violation of the following provisions:

(a) Equal Treatment. Similarly situated Owners and occupants shall be treated similarly.

(b) Speech. The rights of Owners and occupants to display political signs and symbols in or on their Units shall not be abridged, except that the Association may adopt time, place and manner restrictions (including design criteria) for the purpose of minimizing damage and disturbance to other Owners and occupants of Units.

(c) Religious and Holiday Displays. The rights of Owners to display religious and holiday signs, symbols and decorations inside structures on their Units of the kinds normally displayed in residences located in single-family residential neighborhoods shall not be abridged, except that the Association may adopt time, place and manner restrictions (including design criteria) for the purpose of minimizing damage and disturbance to other Owners and occupants of Units.

(d) Household Composition. No rule shall interfere with the freedom of occupants of Units to determine the composition of their households, except that the Association shall have the power to require that all occupants be members of a single housekeeping unit and to limit the total number of occupants permitted in each Unit on the basis of the size and facilities of the Unit and its fair use of the Common Area.

(e) Activities Within Dwellings. No rule shall interfere with the activities carried on within the confines of dwellings, except that the Association may prohibit activities not normally associated with property restricted to residential use, and it may restrict or prohibit any activities that create monetary costs for the Association or other Owners, that create a danger to the health or safety of occupants of other Units, that generate excessive noise or traffic, that create unsightly conditions visible outside the dwelling, or that create an unreasonable source of annoyance.

(f) Allocation of Burdens and Benefits. Except as contemplated in Section 2.1(c), no rule shall alter the allocation of financial burdens among the various Units or rights to use the Common Area to the detriment of any Owner over that Owner's objection expressed in writing to the Association. Nothing in this provision shall prevent the Association from changing the Common Areas available, from adopting generally applicable rules for use of Common Area, or from denying use privileges to those who abuse the Common Area, violate rules or this Declaration, or fail to pay assessments. This provision does not affect the right to increase the amount of assessments as provided in Article VII.

(g) Alienation. No rule shall prohibit leasing or transfer of any Unit, or require consent of the Association or Board for leasing or transfer of any Unit; provided, the Association or the Board may require a minimum lease term of up to 12 months. The Association may require that Owners use lease forms approved by the Association, but shall not impose any fee on the lease or transfer of any Unit greater than an amount reasonably based on the costs to the Association to administer that lease or transfer.

(h) Reasonable Rights to Develop. No rule or action by the Association or Board shall unreasonably impede the Declarant's or Developer's right to develop the Property.

(i) Abridging Existing Rights. If any rule would otherwise require Owners or occupants of Units to dispose of personal property which they maintained in or on the Unit prior to the effective date of such rule, or to vacate a Unit in which they resided prior to the effective date of such rule, and such property was maintained or such occupancy was in compliance with this Declaration and all rules previously in force, such

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rule shall not apply to any such Owners without their written consent unless the rule was in effect at the time such Owners or occupants acquired their interest in the Unit.

(j) Activities Incidental to Construction. No rule or action by the Association shall impede the Declarant or Developer from maintaining upon Common Areas and Units which they own any facilities necessary or incidental to construction or sale of Units. By way of example and not limitation, no rule shall prohibit Declarant or Developer from maintaining temporary structures for use during construction of a Unit or from using any home as a sales office.

The limitations in this Section 8.4 shall apply to rules only; they shall not apply to amendments to this Declaration adopted in accordance with Section 12.2.

Article IX **EASEMENTS**

9.1. Easements for Utilities, Etc.

(a) There are hereby reserved to the Declarant, so long as the Declarant owns any property described on Exhibit "A" of this Declaration, the Association and the designees of each (which may include, without limitation, any governmental or quasi-governmental entity and any utility company) perpetual non-exclusive easements, over, under and through such portions of the Property (but not through a structure) as shown on the Map for the purpose of monitoring, replacing, repairing, maintaining and operating cable television systems, master television antenna systems and other devices for sending or receiving data and/or other electronic signals; security and similar systems; roads, walkways, pathways and trails; wetlands and drainage systems; street lights and signage; and all utilities, including, but not limited to, water, sewer, telephone, gas, electricity and utility meters; and for the purpose of installing any of the foregoing on property which the Declarant or the Association owns or within easements designated for such purposes on recorded plats of the Property. Further, easements ten (10) feet in width for such purposes are reserved over, under and through and along the rear property lines of the Property, and easements five (5) feet in width for such purposes are reserved over, under and through and along all side property lines of the Property, as well as temporary easements five (5) feet in width along the front property lines of the Property for construction, maintenance and repair purposes. Within such ten (10) foot and five (5) foot easements, no structure, planting or other material shall be placed or permitted to remain which may interfere with the installation and maintenance of the utilities, or which may change the direction of flow of drainage channels in the easements, or which may obstruct or retard the flow of water through drainage channels in the easements.

Declarant specifically grants to the local water supplier, electric company, and natural gas supplier easements across the Property for ingress, egress, installation, reading, replacing, repairing and maintaining utility meters and boxes.

(b) There is hereby reserved to the Declarant, so long as the Declarant owns any property described on Exhibit "A" of this Declaration, a non-exclusive easement for itself and its assignees over all of the Properties, subject to the limitations set forth in subsection (c) below, as necessary to provide for the orderly development of any property described on Exhibits "A," along with the right and power to assign such specific easements for such purpose as may be necessary, in the sole discretion of Declarant. To the extent reasonably possible, such easements over Units shall be limited to the setback areas adjacent to the perimeter boundary of each Unit.

(c) Any damage to a Unit resulting from the exercise of the easements described in subsections (a) and (b) of this Section shall promptly be repaired by, and at the expense of, the Person

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exercising the easement. The exercise of these easements shall not extend to permitting entry into the structures on any Unit, nor shall it unreasonably interfere with the use of any Unit and, except in an emergency, entry onto any Unit shall be made only after reasonable notice to the Owner or occupant.

9.2. Easements for Maintenance and Flood Water. The Declarant reserves for itself, the Association and their successors, assigns and designees, the nonexclusive right and easement over the Property for access, ingress and egress to creeks, streams and wetlands located within the Area of Common Responsibility and for the purpose of (a) installing, keeping, maintaining, repairing, and replacing pumps in order to provide water for the irrigation of any of the Area of Common Responsibility; (b) constructing, maintaining and repairing any bulkhead, retaining wall, levee or other structure retaining water; (c) taking action (which may include, without limitation, excavating and stabilizing) to address erosion and control flooding; and (d) removing trash and other debris therefrom. All persons entitled to exercise these easements shall use reasonable care in, and repair any damage resulting from, the intentional exercise of such easements. Nothing herein shall be construed to require Declarant, the Association, or any other Person to take any action permitted by such easements nor to make Declarant, the Association, or any other Person liable for damage resulting from erosion or from flooding due to heavy rainfall or other natural occurrences.

9.3. Right of Entry. The Association shall have the right, but not the obligation, to enter upon any Unit for emergency, security and safety reasons, to perform maintenance pursuant to Article V hereof and to inspect for the purpose of ensuring compliance with this Declaration, Bylaws and rules. Such right may be exercised by any member of the Board, the Association's officers, agents, employees and managers, and all policemen, firemen, ambulance personnel and similar emergency personnel in the performance of their duties. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner. This right of entry shall include the right of the Association to enter upon any Unit to cure any condition which may increase the possibility of a fire or other hazard in the event an Owner fails or refuses to cure the condition within a reasonable time after requested by the Board, but shall not authorize entry into any single family detached dwelling without permission of the Owner, except by emergency personnel acting in their official capacities.

Article X **MORTGAGEE PROVISIONS**

The following provisions are for the benefit of holders, insurers, and guarantors of first Mortgages on Units in the Property.

10.1. Notices of Action. An institutional holder, insurer or guarantor of a first Mortgage who provides a written request to the Association (such request to state the name and address of such holder, insurer, or guarantor and the street address of the Unit to which its Mortgage relates, thereby becoming an "Eligible Holder"), will be entitled to timely written notice of:

(a) Any condemnation loss or any casualty loss which affects a material portion of the Property or which affects any Unit on which there is a first Mortgage held, insured or guaranteed by such Eligible Holder;

(b) Any delinquency in the payment of assessments or charges owed by a Unit subject to the Mortgage of such Eligible Holder, where such delinquency has continued for a period of 60 days, or any other violation of the Declaration or By-Laws relating to such Unit or the Owner or Occupant which is not cured within 60 days; or

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

10.2. No Priority. No provision of this Declaration or the By-Laws gives or shall be construed as giving any Owner or other party priority over any rights of the first Mortgagee of any Unit in the case of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Common Area.

10.3. Notice to Association. Upon request, each Owner shall be obligated to furnish to the Association the name and address of the holder of any Mortgage encumbering such Owner's Unit.

10.4. HUD/VA Approval. As long as there is a Class "B" membership, the following actions shall require the prior approval of the U.S. Department of Housing and Urban Development or the U.S. Department of Veterans Affairs, if either such agency is insuring or guaranteeing the Mortgage on any Unit: merger, consolidation or dissolution of the Association; annexation of additional property; dedication, conveyance or mortgaging of Common Area; or material amendment of this Declaration.

Article XI **DECLARANT'S RIGHTS**

Any or all of the special rights and obligations of the Declarant set forth in this Declaration or the By-Laws may be transferred or assigned in whole or in part to other Persons, provided that the transfer shall not reduce an obligation nor enlarge a right beyond that which the Declarant has under this Declaration or the By-Laws. No such transfer or assignment shall be effective unless it is in a written instrument signed by the Declarant and duly recorded in the Public Records.

The Declarant and Developer may maintain and carry on upon portions of the Common Area and Units which they own such facilities and activities as, in the sole opinion of the Declarant, may be reasonably required, convenient, or incidental to the construction or sale of Units, including, but not limited to, business offices, signs, model homes, construction offices, and sales offices. The Declarant and Developer shall have easements for access to and use of such facilities.

The Declarant and its employees, agents, and designees shall also have a right and easement over and upon all of the Common Area for the purpose of making, constructing and installing such improvements to the Common Area as it deems appropriate in its sole discretion.

No Person shall record any declaration of covenants, conditions, and restrictions, or declaration of condominium or similar instrument affecting any portion of the Property without Declarant's review and written consent. Any attempted recordation without such consent shall result in such instrument being void and of no force and effect unless subsequently approved by written consent signed by the Declarant and recorded in the Public Records.

Notwithstanding any contrary provision of this Declaration, no amendment to or modification of any Use Restrictions and Rules or Design Guidelines made after termination of the Class "B" Control Period shall be effective without prior notice to and the written approval of Declarant so long as the Declarant owns any portion of the property described on Exhibit "A" primarily for development and sale.

This Article may not be amended without the written consent of the Declarant. The rights contained in this Article shall terminate upon the earlier of (a) 40 years from the date this Declaration is recorded, or (b) upon recording by Declarant of a written statement that all sales activity has ceased.

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The Declarant may, at Declarant's option, amend and modify this Declaration without obtaining the consent or approval of any other person or entity if such amendment or modification is necessary to cause this Declaration to comply with the requirements of FHA, VA, the Federal National Home Mortgage Association or similar agency.

Article XII
GENERAL PROVISIONS

12.1. Duration.

(a) Unless terminated as provided in **Section 12.1(b)**, this Declaration shall have perpetual duration. If North Carolina law hereafter limits the period during which covenants may run with the land, then to the extent consistent with such law, this Declaration shall automatically be extended at the expiration of such period for successive periods of 20 years each, unless terminated as provided herein. Notwithstanding the above, if any of the covenants, conditions, restrictions or other provisions of this Declaration shall be unlawful, void, or voidable for violation of the rule against perpetuities, then such provisions shall continue only until 21 years after the death of the last survivor of the now living descendants of Elizabeth II, Queen of England.

(b) Unless otherwise provided by North Carolina law, in which case such law shall control, this Declaration may not be terminated within the first 25 years after the date of recording without the consent of all Unit Owners. Thereafter, it may be terminated only pursuant to North Carolina General Statutes Section 47F-2-118, as it may be amended from time-to-time, and by an instrument signed by Owners of at least 80% of the total Units within the Property and by the Declarant, if the Declarant owns any portion of the Property. Nothing in this Section shall be construed to permit termination of any easement created in this Declaration without the consent of the holder of such easement.

12.2. Amendment. Except as otherwise specifically provided in this Declaration, this Declaration may be amended only by the affirmative vote or written consent, or any combination thereof, of Owners of not less than 75% of the total number of Units within the Property; provided, however, Declarant may, at Declarant's option, amend or modify this Declaration without obtaining the consent or approval of any other Owner if such amendment or modification is correctional in nature only. In addition, the approval requirements set forth in **Section 10.4** shall be met, if applicable.

Notwithstanding the above, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause.

No amendment may remove, revoke, or modify any right or privilege of the Declarant or the Class "B" Member without the written consent of the Declarant or the Class "B" Member, respectively (or the assignee of such right or privilege).

If an Owner consents to any amendment to this Declaration or the By-Laws, it will be conclusively presumed that such Owner has the authority to consent, and no contrary provision in any Mortgage or contract between the Owner and a third party will affect the validity of such amendment.

Any amendment shall become effective upon recording in the Public Records, unless a later effective date is specified in the amendment. Any procedural challenge to an amendment must be made within twelve (12) months of its recordation or such amendment shall be presumed to have been validly adopted. In no event shall a change of conditions or circumstances operate to amend any provisions of this Declaration.

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12.3. Severability. Invalidation of any provision of this Declaration, in whole or in part, or any application of a provision of this Declaration by judgment or court order shall in no way affect other provisions or applications.

12.4. Cumulative Effect; Conflict. The provisions of this Declaration shall be cumulative with the provisions of any applicable supplemental declaration. Nothing in this Section shall preclude any supplemental declaration or other recorded declaration, covenants and restrictions applicable to any portion of the Properties from containing additional restrictions or provisions which are more restrictive than the provisions of this Declaration, and the Association shall have the standing and authority to enforce the same.

12.5. Use of the Name "Westhaven Townhomes". No Person shall use the name "Westhaven Townhomes" or any derivative in any printed or promotional material without the Declarant's prior written consent. However, the Association shall be entitled to use the name "Westhaven Townhomes" in its name.

12.6. Compliance. Every Owner and occupant of any Unit shall comply with this Declaration, the Bylaws and the Use Restrictions and Rules promulgated pursuant to Article VIII. Failure to comply shall be grounds for an action by the Association or, in a proper case, by any aggrieved Unit Owner(s) to recover sums due, for damages or injunctive relief, or for any other remedy available at law or in equity, in addition to those enforcement powers granted to the Association in Section 4.3.

12.7. Notice of Sale or Transfer of Title. Any Owner desiring to sell or otherwise transfer title to his or her Unit shall give the Board or its designee at least seven days' prior written notice of the name and address of the purchaser or transferee, the date of such transfer of title, and such other information as the Board may reasonably require. The transferor shall continue to be jointly and severally responsible with the transferee for all obligations of the Owner of the Unit, including assessment obligations, until the date upon which such notice is received by the Board or its designee, notwithstanding the transfer of title.

12.8. Exhibits. Exhibit "A" attached to this Declaration is incorporated by this reference and amendment of such exhibits shall be governed by the provisions of Section 12.2. All other exhibits are attached for informational purposes and may be amended as provided therein or in the provisions of this Declaration which refer to such exhibits.

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IN WITNESS WHEREOF, the undersigned Declarant has executed this Declaration this 8th day of August, 2002.

Episcopal Housing Ministry [SEAL]

By: Shepherd Smith [SEAL]
Its: President



STATE OF NORTH CAROLINA

COUNTY OF WAKE

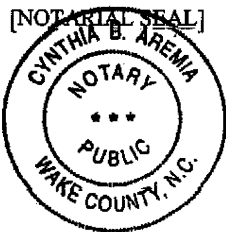
I, Cynthia B. Arema, a Notary Public of the County and State aforesaid, do hereby certify that Shepherd Smith, who is President of Episcopal Housing Ministry, a North Carolina nonprofit corporation, personally appeared before me this day and acknowledged the due execution of the foregoing instrument on behalf of the said corporation.

WITNESS my hand and official stamp or seal this 8th day of August, 2002.

Cynthia B. Arema
Notary Public

My Commission Expires: My Commission Expires 6-8-03

[NOTARIAL SEAL]



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EXHIBIT "A"

Land Initially Submitted

ALL THOSE TRACTS OR PARCELS OF LAND lying and being in Wake County, North Carolina, and being more particularly described as follows:

BEING all of Tract 1, containing 10.007 acres with a 0.805 acre being in the right of way of SR 1153 leaving a net acreage of 9.202, as shown on map entitled "Boundary and Recombination Survey for Robert A. Bryan, and wife, Jean B. Bryan and Joseph Cleveland Galloway," by Griffin Land Surveying, Inc., dated September 22, 1997, and recorded in book of Maps 1997, page 1930, Wake County Registry, reference to which is hereby made for greater certainty of description.

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EXHIBIT "B"

Initial Use Restrictions and Rules

The following restrictions shall apply to the Property and all of the Units until such time as they are amended, modified, repealed or limited by rules of the Association adopted pursuant to **Article VIII** of the Declaration.

1. **General.** The Property shall be used only for residential, recreational and related purposes (which may include, without limitation, an information center and/or a sales office for any real estate broker retained by the Declarant or Developer to assist in the sale of Units, offices for any property manager retained by the Association, or business offices for the Declarant or the Association) consistent with this Declaration.

2. **Restricted Activities.** The following activities are prohibited within the Property, or any of the Units, unless expressly authorized by, and then subject to such conditions as may be imposed by, the Board of Directors:

(a) Raising, breeding, or keeping of animals, livestock, or poultry of any kind, except that a reasonable number of dogs, cats, or other usual and common household pets may be permitted in a Unit; however, those pets which are permitted to roam free, or, in the sole discretion of the Board, make objectionable noise, endanger the health or safety of, or constitute a nuisance or inconvenience to the occupants of other Units, shall be removed upon request of the Board. The number of household pets generally considered to be outdoor pets such as dogs and cats shall not exceed three (3) in number except for newborn offspring of such household pets which are under nine (9) months in age. If the pet owner fails to honor such request, the Board may remove the pet. Dogs shall be kept on a leash or otherwise confined in a manner acceptable to the Board whenever outside the dwelling. Pets shall be registered, licensed and inoculated as required by law;

(b) Any activity which emits foul or obnoxious odors outside the Unit or creates noise or other conditions which tend to disturb the peace or threaten the safety of the occupants of other Units;

(c) Any activity which violates local, state, or federal laws or regulations; however, the Board shall have no obligation to take enforcement action in the event of a violation;

(d) Pursuit of hobbies or other activities which tend to cause an unclean, unhealthy or untidy condition to exist outside of enclosed structures on the Unit;

(e) Any noxious or offensive activity which in the reasonable determination of the Board tends to cause embarrassment, discomfort, annoyance or nuisance to the occupants of other Units;

(f) Outside burning of trash, leaves, debris or other materials, except during the normal course of development and/or constructing the Buildings;

(g) Use or discharge of any radio, loudspeaker, horn, whistle, bell, or other sound device so as to be audible to occupants of other Units, except alarm devices used exclusively and properly for security purposes;

(h) Use and discharge of firecrackers and other fireworks;

(i) Dumping of grass clippings, leaves or other debris, petroleum products, fertilizers, or other potentially hazardous or toxic substances in any drainage ditch, stream or pond, or elsewhere within the

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Property, except Declarant and Developer may dump and bury rocks, trees, and stumps removed from a building site in such areas as may be designated on recorded plats of the Property;

(j) Accumulation of rubbish, trash or garbage other than in appropriate containers stored out of sight of neighboring property until 24 hours before scheduled garbage pickups and shall be removed within 24 hours after scheduled garbage pick ups; provided, recycling activities shall be permitted so long as the recyclable materials are collected in approved containers or otherwise out of sight of neighboring property and are not allowed to create a condition which violates any other provision of these Initial Use Restrictions and Rules. In the event that garbage is left at the curbside which the sanitation department will not remove, or unsecured trash is strewn about the Common Areas that must be removed by the maintenance crew, the responsible Owner will be charged the uniform fee for removal established from time to time by the Board;

(k) Obstruction or rechanneling of drainage flows after location and installation of drainage swales, storm sewers or storm drains, except that the Declarant and the Association shall have such right;

(l) Subdivision of a Unit into two or more Units, except that the Declarant and its designees shall be permitted to subdivide or replat Units which they own without Board approval;

(m) Use of any Unit for operation of a timesharing, fraction-sharing, or similar program whereby the right to exclusive use of the Unit rotates among participants in the program on a fixed or floating time schedule over a period of years;

(n) Discharge of firearms; provided, the Board shall have no obligation to take action to prevent or stop such discharge;

(o) Any business or trade, except that an Owner or occupant residing in a Unit may conduct business activities within the Unit so long as: (i) the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from outside the Unit; (ii) the business activity conforms to all zoning requirements for the Property; (iii) the business activity does not involve regular visitation of the Unit by clients, customers, suppliers, or other business invitees or door-to-door solicitation of residents of the Property; (iv) the business activity is consistent with the residential character of the Property and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents of the Property, as may be determined in the sole discretion of the Board. The foregoing shall not preclude occasional garage sales, moving sales, rummage sales or similar activities provided that such activities are not held with respect to any one Unit more than once in any six-month period.

The terms "business" and "trade," as used in this provision, shall be construed to have their ordinary, generally accepted meanings and shall include, without limitation, any occupation, work, or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether: (i) such activity is engaged in full or part-time, (ii) such activity is intended to or does generate a profit, or (iii) a license is required.

The leasing of a Unit shall not be considered a business or trade within the meaning of this subsection. This subsection shall not apply to any activity conducted by the Declarant or the Developer with respect to its development and sale of the Units or its use of any Units which it owns within the Property.

3. Prohibited Conditions. The following shall be prohibited within the Property or any Unit:

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(a) Plants, animals, devices, or other things of any sort whose activities or existence in any way is noxious, dangerous, unsightly, unpleasant, or of a nature as may diminish or destroy the enjoyment of the Property; and

(b) Towers, antennas, or other apparatus for the transmission or reception of television, radio, satellite, or other signals of any kind outside of the dwelling on a Unit other than (i) a customary antenna, which shall not extend more than ten (10) feet above the top roof ridge of the dwelling; and (ii) a satellite dish or dish no larger than one (1) meter in diameter. In no event shall free-standing transmission or receiving towers which support satellite dishes larger than one meter in diameter or non-standard television antennae be permitted. Any apparatus permitted under this subsection which is visible from streets or other Units within the Property shall be subject to approval by the Board, provided such conditions do not cause unreasonable cost or delay and do not preclude reception of an acceptable quality signal.

(c) Non-operational or "junk" automobiles. For this purpose, a non-operational or "junk" automobile shall include any vehicle which is incapable of being driven off the Property for mechanical or other reasons for a period of ten (10) days, or is otherwise reasonably determined by the Board to be unsightly or to destroy or materially diminish the enjoyment of the Property.

(d) Clotheslines, outside clothes drying racks, and window air conditioners. In addition, no towels or clothing may be hung on railings of stairs or decks.

(e) Playground and camping equipment, including, but not limited to, sandboxes, swing sets, see-saws, trampolines, tents, playhouses, dog beds, etc., may not be placed in the Common Areas.

4. Leasing of Units. "Leasing," for purposes of this paragraph, is defined as regular, exclusive occupancy of a Unit by any person, other than the Owner for which the Owner receives any consideration or benefit, including, but not limited to, a fee, service, gratuity or emolument. All leases shall be in writing. Leases shall have a minimum initial term of not less than six months. Notice of any lease, together with such additional information as may be required by the Board, shall be given to the Board or its designee by the Unit Owner within ten (10) days of execution of the lease. The Owner must make available to the lessee copies of the Declaration, By-Laws and the Use Restrictions and Rules. A refundable \$150.00 security deposit must be provided to the Association for each rented Unit to cover any damages to Common Areas by renter(s). At the discretion of the Board, homeowner dues for rented Units may be increased, but shall not be in excess of 125% of those assessed for resident Owners.

5. Signs. Unless approved by the Board, no sign of any kind shall be displayed to the public view on any Unit except one sign of not more than six (6) square feet advertising the property for sale or rent or signs used by a Declarant, or its designated assigns, to advertise the property during the construction and sales period.

6. Privacy Fences. Unless approved by the Board, no fence of any kind shall be constructed on the Property or with respect to any Unit by or at the direction of an Owner. The Board may develop or prescribe from time to time uniform rules or requirements for fences that may be constructed by Owners without obtaining additional approval by the Board. All fences shall be uniform in nature, and the Board shall not be required to approve any fence that is not reasonably uniform with other approved fences on the Property.

7. Speed Limit. The speed limit on any road within the Property shall be 20 miles per hour. Special attention should be exercised when driving within the Property to ensure the safety of all pedestrians, particularly children, and pets.

8. Use of Cycles, Skateboards, Motorbikes, Etc. Owners and their guests may use bicycles, skateboards, and other non-motorized recreational vehicles within the Property, provided that they exercise due

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care and consideration for pedestrians and motor vehicle traffic. Motorbikes, go-carts, or other non-licensed motorized vehicles may not be operated on the roads or other Common Areas within the Property. Cycles, skateboards, etc. may not be left unattended in the Common Areas and may only be stored or parked at the rear of the Owner's or occupant's Unit.

9. Supervision of Children. Reasonable supervision of children by a responsible adult shall be exercised at all times when children are playing in the Common Areas or using any recreational facilities.

10. Violations. Any exterior change made in violation of the Declaration, By-laws, or these Use Restrictions and Rules is subject to removal by the Owner within a period of time to be set by the Board and at the expense of the Owner, in which event, the exterior must be returned to the original condition. At such time any exterior change is approved in accordance with the Declaration, the By-laws, and these Use Restrictions and Rules, a contract must be signed between the Owner requesting such change and an officer of the Board.

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EXHIBIT "C"

BY-LAWS

OF

**WESTHAVEN TOWNHOMES
HOMEOWNERS' ASSOCIATION**

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BYLAWS

OF

**WESTHAVEN TOWNHOMES
HOMEOWNERS' ASSOCIATION**

Article I

Name, Principal Office, and Definitions

1.1 Name. The name of the corporation is Westhaven Townhomes Homeowners' Association (the "Association").

1.2 Principal Office. The principal office of the Association shall be located in Wake County, North Carolina. The Association may have such other offices, either within or outside the State of North Carolina, as the Board of Directors may determine or as the officers of the Association may require.

1.3 Definitions. The words used in these By-Laws shall be given their normal, commonly understood definitions. Capitalized terms shall have the same meaning as set forth in that Declaration of Covenants, Conditions, and Restrictions for Westhaven Townhomes filed in the Office of the Register of Deeds for Wake County, North Carolina, as it may be amended (the "Declaration"), unless the context indicates otherwise.

Article II

Membership: Meetings, Quorum, Voting, Proxies

2.1 Membership. The Association shall have two classes of membership, Class "A" and Class "B", as more fully set forth in the Declaration, the terms of which pertaining to membership are incorporated by this reference.

2.2 Place of Meetings. Meetings of the Association shall be held at the principal office of the Association or at such other suitable place convenient to the Members as may be designated by the Board, either within the Properties or as convenient as is possible and practical.

2.3 Annual Meetings. The first meeting of the Association, whether a regular or special meeting, shall be held within one year from the date of incorporation of the Association. Subsequent regular annual meetings shall be set by the Board so as to occur during the third quarter of the Association's fiscal year on a date and at a time set by the Board.

2.4 Special Meetings. The President may call special meetings. In addition, it shall be the duty of the President to call a special meeting if so directed by resolution of the Board or upon a petition signed by Members representing at least 10% of the total Class "A" votes in the Association.

2.5 Notice of Meetings. Written or printed notice stating the place, day, and hour of any meeting of the Members shall be delivered, either personally or by mail, to each Member entitled to vote at such meeting at the mailing address of each Unit or to any other mailing address designated in writing by a Member, not less than 10 nor more than 60 calendar days before the date of such meeting, by or at the direction of the President or the Secretary or the officers or persons calling the meeting. The notice shall also state the items on the meeting

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agenda, including the general nature of any proposed amendment to the Declaration or Bylaws, any budget changes, and any proposal to remove a director or officer.

In the case of a special meeting or when otherwise required by statute or these By-Laws, the purpose or purposes for which the meeting is called shall be stated in the notice. No business shall be transacted at a special meeting except as stated in the notice.

If mailed, the notice of a meeting shall be deemed to be delivered when deposited in the United States mail addressed to the Member as set forth above, with postage prepaid.

2.6 Waiver of Notice. Waiver of notice of a meeting of the Members shall be deemed the equivalent of proper notice. Any Member may, in writing, waive notice of any meeting of the Members, either before or after such meeting. Attendance at a meeting by a Member or the Member's proxy shall be deemed waiver by such Member of notice of the time, date and place thereof, unless such Member or proxy specifically objects to lack of proper notice at the time the meeting is called to order. Attendance at a special meeting also shall be deemed waiver of notice of all business transacted at such meeting unless an objection on the basis of lack of proper notice is raised before the business is put to a vote.

2.7 Adjournment of Meetings. If any meeting of the Association cannot be held because a quorum is not present, Members or their proxies holding a majority of the votes represented at such meeting may adjourn the meeting to a time not less than five (5) nor more than thirty (30) calendar days from the time the original meeting was called. At the reconvened meeting, if a quorum is present, any business may be transacted which might have been transacted at the meeting originally called. If a time and place for reconvening the meeting is not fixed by those in attendance at the original meeting or if for any reason a new date is fixed for reconvening the meeting after adjournment, notice of the time and place for reconvening the meeting shall be given to Members in the manner prescribed for regular meetings.

The Members represented at a duly called or held 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, provided that any action taken is approved by at least a majority of the votes required to constitute a quorum.

2.8 Voting. The voting rights of the Members shall be as set forth in the Declaration and in these By-Laws, and such voting rights provisions are specifically incorporated by this reference.

2.9 Proxies. At all meetings of Members, each Member may vote in person (if a corporation, partnership or trust, through any officer, director, partner or trustee duly authorized to act on behalf of the Member) or by proxy, subject to the limitations of North Carolina law. All proxies shall be in writing specifying the Unit(s) for which it is given, signed by the Member or its duly authorized attorney-in-fact, dated and filed with the Secretary of the Association prior to any meeting for which it is to be effective. A proxy that is not dated shall be void. Unless otherwise specifically provided in the proxy, a proxy shall be presumed to cover all votes which the Member giving such proxy is entitled to cast, and in the event of any conflict between two or more proxies purporting to cover the same voting rights, the later dated proxy shall prevail, or if dated as of the same date, both shall be deemed invalid. Every proxy shall be revocable and shall automatically cease upon conveyance of any Unit for which it was given, or upon receipt of notice by the Secretary of the death or judicially declared incompetence of a Member who is a natural person, or of written revocation, or eleven (11) months from the date of the proxy, unless a shorter period is specified in the proxy.

2.10 Majority. As used in these By-Laws, the term "majority" shall mean those votes, Owners, Members, or other group, as the context may indicate, totaling more than fifty percent (50%) of the total eligible number.

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2.11 Quorum. Except as otherwise provided in these By-Laws or in the Declaration, the presence, in person or by proxy, of Members representing twenty percent (20%) of the total Class "A" votes in the Association shall constitute a quorum at all meetings of the Association. If a quorum is not present at a meeting, the meeting may be adjourned to a later date by the affirmative vote of those present in person or by proxy. The quorum requirement at the next meeting shall be one-half of the quorum requirement applicable to the meeting adjourned for lack of a quorum. This provision shall continue to reduce the quorum by fifty percent (50%) from that required at the previous meeting, as previously reduced, until such time as a quorum is present and business can be conducted. The rescheduled meeting (with the lower quorum requirement) shall be held no more than sixty (60) days following the preceding meeting.

2.12 Conduct of Meetings. The President shall preside over all meetings of the Association, and the Secretary shall keep the minutes of the meetings and record in a minute book all resolutions adopted and all other transactions occurring at such meetings.

2.13 Action Without a Meeting. Any action required or permitted by law to be taken at a meeting of the Members may be taken without a meeting, without prior notice and without a vote, if written consent specifically authorizing the proposed action is signed by all Members entitled to vote thereon. Such consent shall be filed with the minutes of the Association, and shall have the same force and effect as a vote of the Members at a meeting. Within ten (10) business days after receiving authorization for any action by written consent, the Secretary shall give written notice to all Members entitled to vote who did not give their written consent, fairly summarizing the material features of the authorized action.

Article III

Board of Directors: Selection, Meetings, Powers

3.1 Governing Body; Composition. The affairs of the Association shall be governed by a Board of Directors, each of whom shall have one equal vote. Except with respect to directors appointed by the Class "B" Member, the directors shall be Members or Residents; provided, no Owner and Resident representing the same Unit may serve on the Board at the same time. A "Resident" shall be any natural person 18 years of age or older whose principal place of residence is a Unit within the Properties. In the case of a Member which is not a natural person, any officer, director, partner, employee or trust officer of such Member shall be eligible to serve as a director unless otherwise specified by written notice to the Association signed by such Member; provided, no Member may have more than one such representative on the Board at a time, except in the case of directors appointed by the Class "B" Member.

3.2 Number of Directors. The Board shall consist of three to five directors, as provided in Sections 3.3 and 3.5 below. The initial Board shall consist of three directors.

3.3 Directors During Class "B" Control Period. Subject to the provisions of Section 3.5 below, the directors shall be selected by the Class "B" Member acting in its sole discretion and shall serve at the pleasure of the Class "B" Member until the first to occur of the following, which occurrence shall signify the end of the Class "B" Control Period:

(a) when 90% of the total number of Units proposed by the site plan for the property described on Exhibit "A" of the Declaration have certificates of occupancy issued thereon and have been conveyed to Persons other than the Developer; or

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(b) when, in its discretion, the Class "B" Member so determines.

3.4 Nomination and Election Procedures.

(a) Nominations and Declarations of Candidacy. Prior to each election of directors by the Class "A" Members, the Board shall prescribe the opening date and the closing date of a reasonable filing period in which each and every eligible person who has a bona-fide interest in serving as a director may file as a candidate for any position to be filled by votes of Class "A" Members. The Board shall also establish such other rules and regulations as it deems appropriate to conduct the nomination of directors in a fair, efficient and cost-effective manner.

Except with respect to directors selected by the Class "B" Member, nominations for election to the Board may also be made by a Nominating Committee. The Nominating Committee, if any, shall consist of a Chairman, who shall be a member of the Board, and three or more Members or representatives of Members. The Board shall appoint the members of the Nominating Committee, if one is to be appointed, not less than thirty (30) calendar days prior to each annual meeting to serve a term of one (1) year and until their successors are appointed, and such appointment shall be announced at each annual meeting.

The Nominating Committee may make as many nominations for election to the Board as it shall in its discretion determine. In making its nominations, the Nominating Committee shall use reasonable efforts to nominate candidates representing the diversity which exists within the pool of potential candidates.

Each candidate shall be given a reasonable, uniform opportunity to communicate his or her qualifications to the Members and to solicit votes.

(b) Election Procedures. Each Owner may cast the entire vote assigned to his Unit for each position to be filled. There shall be no cumulative voting. That number of candidates equal to the number of positions to be filled receiving the greatest number of votes shall be elected. Directors may be elected to serve any number of consecutive terms.

3.5 Election and Term of Office. Notwithstanding any other provision of these By-Laws:

(a) Within thirty (30) calendar days after the time that Class "A" Members other than Builders own fifty percent (50%) of the Units proposed by the site plan for the property described in Exhibit "A" of the Declaration, or whenever the Class "B" Member earlier determines, the Board shall be increased to five directors. The President shall call for an election by which the Class "A" Members shall be entitled to elect two of the five directors. The remaining three directors shall be appointees of the Class "B" Member. The directors elected by the Class "A" Members shall not be subject to removal by the Class "B" Members and shall be elected for a term of two years or until the happening of the event described in subsection (b), whichever is shorter. If such directors' terms expire prior to the happening of the event described in subsection (b), successors shall be elected for a like term.

(b) Within ninety (90) calendar days after termination of the Class "B" Control Period, the President shall call for an election by which the Class "A" Members shall be entitled to elect three of the five directors. The remaining two directors shall be appointees of the Class "B" Member. The directors elected by the Class "A" Members shall not be subject to removal by the Class "B" Member and shall serve until the first annual meeting following the termination of the Class "B" Control Period. If such annual meeting is scheduled to occur within ninety (90) calendar days after termination of the Class "B" Control Period, this subsection shall not apply and directors shall be elected in accordance with subsection (c) below.

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(c) Not later than the first annual meeting after the termination of the Class "B" Control Period, an election shall be held at which four directors shall be elected by the Class "A" Members, with the two directors receiving the largest number of votes being elected for a term of two (2) years and the remaining two (2) directors being elected for a term of one (1) year.

Until termination of the Class "B" membership, the Class "B" Member shall be entitled to appoint one (1) director. Upon termination of the Class "B" membership, the director elected by the Class "B" Member shall resign and the remaining directors shall be entitled to appoint a director to serve until the next annual meeting, at which the Class "A" Members shall be entitled to elect a director to fill such position. Such director shall be elected for a term of two (2) years.

Upon the expiration of the term of office of each director elected by the Class "A" Members, a successor shall be elected to serve a term of two (2) years. The directors elected by the Class "A" Members shall hold office until their respective successors have been elected.

3.6 Removal of Directors and Vacancies. Any director elected by the Class "A" Members may be removed, with or without cause, by Members holding a majority of the votes entitled to be cast for his or her election. Any director whose removal is sought shall be given notice prior to any meeting called for that purpose. Upon removal of a director, a successor shall be elected by the Class "A" Members to fill the vacancy for the remainder of the term of such director.

Any director elected by the Class "A" Members who has three or more consecutive unexcused absences from Board meetings, or who is more than thirty (30) calendar days delinquent (or is the representative of a Member who is so delinquent) in the payment of any assessment or other charge due the Association, may be removed by a majority of the directors present at a regular or special meeting at which a quorum is present, and the Board may appoint a successor to fill the vacancy for the remainder of the term.

In the event of the death, disability, or resignation of a director elected by the Class "A" Members, the Board may declare a vacancy and appoint a successor to fill the vacancy until the next annual meeting, at which time the Class "A" Members shall elect a successor for the remainder of the term.

This Section shall not apply to directors appointed by the Class "B" Member nor to any director serving as a representative of the Declarant. The Class "B" Member shall be entitled to appoint a successor to fill any vacancy on the Board resulting from the death, disability or resignation of a director appointed by or elected as a representative of the Class "B" Member.

3.7 Organizational Meetings. The first meeting of the Board following each annual meeting of the membership shall be held immediately following the annual meeting or at such other time and place within ten (10) business days thereafter as a majority of the directors shall agree upon.

3.8 Regular Meetings. Regular meetings of the Board may be held at such time and place as a majority of the directors shall determine, but at least four such meetings shall be held during each fiscal year with at least one (1) per quarter.

3.9 Special Meetings. Special meetings of the Board of Directors shall be held when called by written notice signed by the President or Vice President or by any two directors. The notice shall specify the time and place of the meeting and the nature of any special business to be considered.

3.10 Notice; Waiver of Notice.

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(a) Notice of the time and place of a regular meeting shall be communicated to directors not less than four calendar days prior to the meeting. Notice of the time and place of a special meeting shall be communicated to directors not less than seventy-two (72) hours prior to the meeting. No notice need be given to any director who has signed a waiver of notice or a written consent to holding of the meeting. The notice shall be given to each director by: (i) personal delivery; (ii) first class mail, postage prepaid; (iii) telephone communication, either directly to the director or to a person at the director's office or home who would reasonably be expected to communicate such notice promptly to the director; or (iv) telecopier transmission to the director's home or office, with confirmation of receipt by the receiving telecopier. All such notices shall be given at the director's telephone or telecopier number or sent to the director's address as shown on the records of the Association. Notices sent by first class mail shall be deemed communicated when deposited into a United States mailbox. Notices given by personal delivery, telephone, or telecopier shall be deemed communicated when delivered or telephoned, or upon receipt of confirmation of transmission via telecopier.

(b) The transactions of any meeting of the Board, however called and noticed or whenever held, shall be as valid as though taken at a meeting duly held after regular call and notice if (i) a quorum is present, and (ii) either before or after the meeting each of the directors not present signs a written waiver of notice, a consent to holding the meeting, or an approval of the minutes. The waiver of notice or consent need not specify the purpose of the meeting. Notice of a meeting also shall be deemed given to any director who attends the meeting without protesting before or at its commencement about the lack of adequate notice.

3.11 Telephonic Participation in Meetings. Members of the Board or any committee designated by the Board may participate in a meeting of the Board or committee by means of conference telephone or similar communications equipment, by means of which all persons participating in the meeting can hear each other. Participation in a meeting pursuant to this subsection shall constitute presence in person at such meeting.

3.12 Quorum of Board of Directors. At all meetings of the Board, a majority of the directors shall constitute a quorum for the transaction of business, and the votes of a majority of the directors present at a meeting at which a quorum is present shall constitute the decision of the Board, unless otherwise specifically provided in these By-Laws or the Declaration. A meeting at which a quorum is initially present may continue to transact business, notwithstanding the withdrawal of directors, if any action taken is approved by at least a majority of the required quorum for that meeting. If any meeting of the Board cannot be held because a quorum is not present, a majority of the directors present at such meeting may adjourn the meeting to a time not less than five (5) nor more than thirty (30) calendar days from the date of the original meeting. At the reconvened meeting, if a quorum is present, any business which might have been transacted at the meeting originally called may be transacted without further notice.

3.13 Compensation. Directors shall not receive any compensation from the Association for acting as such unless approved by members representing a majority of the total Class "A" votes in the Association at a regular or special meeting of the Association. Any director may be reimbursed for expenses incurred on behalf of the Association upon approval of a majority of the other directors. Nothing herein shall prohibit the Association from compensating a director, or any entity with which a director is affiliated, for services or supplies furnished to the Association in a capacity other than as a director pursuant to a contract or agreement with the Association, provided that such director's interest was made known to the Board prior to entering into such contract and such contract was approved by a majority of the Board of Directors, excluding the interested director.

3.14 Conduct of Meetings. The President shall preside over all meetings of the Board, and the Secretary shall keep a minute book of Board meetings recording all Board resolutions and all transactions and proceedings occurring at such meetings.

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3.15 Notice to Owners; Open Meetings. Except in an emergency, notice of Board meetings shall be posted at least 48 hours in advance of the meeting at a conspicuous place within the Properties which the Board establishes for the posting of notices relating to the Association. Notice of any meeting at which assessments are to be established shall state that fact and the nature of the assessment. Subject to the provisions of Section 3.16, all meetings of the Board shall be open to all Members, but Members other than directors may not participate in any discussion or deliberation unless permission to speak is requested on his or her behalf by a director. In such case, the President may limit the time any Member may speak. Notwithstanding the above, the President may adjourn any meeting of the Board and reconvene in executive session, and may exclude Members, to discuss matters of a sensitive nature, such as pending or threatened litigation, personnel matters, etc.

3.16 Action Without a Formal Meeting. Any action to be taken at a meeting of the directors or any action that may be taken at a meeting of the directors may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the directors, and such consent shall have the same force and effect as a unanimous vote.

3.17 Powers. The Board of Directors shall have all of the powers and duties necessary for the administration of the Association's affairs and for performing all responsibilities and exercising all rights of the Association as set forth in the Declaration, these By-Laws, the Articles, and as provided by law, and the Board of Directors shall act in accordance with the standards for directors of non-profit corporations as set forth in N.C.G.S. §55A-8-30. The Board may do or cause to be done all acts and things except those, if any, which the Declaration, Articles, these By-Laws, or North Carolina law direct to be done and exercised exclusively by the membership generally.

3.18 Duties. The duties of the Board shall include, without limitation:

- (a) preparing and adopting, in accordance with the Declaration, an annual budget establishing each Owner's share of the Common Expenses and the dues required from each Owner;
- (b) levying and collecting such assessments from the Owners;
- (c) providing for the operation, care, upkeep, and maintenance of the Area of Common Responsibility;
- (d) designating, hiring, and dismissing the personnel necessary to carry out the rights and responsibilities of the Association and where appropriate, providing for the compensation of such personnel and for the purchase of equipment, supplies, and materials to be used by such personnel in the performance of their duties;
- (e) depositing all funds received on behalf of the Association in a bank depository which it shall approve, and using such funds to operate the Association; provided, any reserve fund may be deposited, in the directors' best business judgment, in depositories other than banks;
- (f) making and amending use restrictions and rules in accordance with the Declaration;
- (g) opening of bank accounts on behalf of the Association and designating the signatories required;
- (h) making or contracting for the making of repairs, additions, and improvements to or alterations of the Common Area in accordance with the Declaration and these By-Laws;

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(i) enforcing by legal means the provisions of the Declaration, these By-Laws, and the rules of the Association and bringing any proceedings which may be instituted on behalf of or against the Owners concerning the Association; provided, the Association shall not be obligated to take action to enforce any covenant, restriction or rule which the Board reasonably determines is, or is likely to be construed as, inconsistent with applicable law, or in any case in which the Board reasonably determines that the Association's position is not strong enough to justify taking enforcement action;

(j) obtaining and carrying property and liability insurance and fidelity bonds, as provided in the Declaration, paying the cost thereof, and filing and adjusting claims, as appropriate;

(k) paying the cost of all services rendered to the Association;

(l) keeping books with detailed accounts of the receipts and expenditures of the Association;

(m) making available to any prospective purchaser of a Unit, any Owner, and the holders, insurers, and guarantors of any Mortgage on any Unit, current copies of the Declaration, the Articles of Incorporation, the By-Laws, rules and all other books, records, and financial statements of the Association, as provided in Section 6.4;

(n) permitting utility suppliers to use portions of the Common Area reasonably necessary to the ongoing development or operation of the Properties;

(o) indemnifying a director, officer or committee member, or former director, officer or committee member of the Association to the extent such indemnity is required under North Carolina law, the Articles of Incorporation or the Declaration;

(p) impose reasonable charges for late payment of assessments and, after notice and an opportunity to be heard, suspend privileges or services provided by the association (except rights of access to Units) during any period that assessments or other amounts due and owing to the Association remain unpaid for a period of thirty (30) days or longer; and

(q) after notice and an opportunity to be heard, impose reasonable fines or suspend privileges or services provided by the Association (except rights of access to Units) for reasonable periods for violations of the Declaration, Bylaws and rules and regulations of the Association.

3.19 Right of Class "B" Member to Disapprove Actions; Declarant Rights. So long as the Class "B" membership exists, the Class "B" Member shall have a right to disapprove any action, policy or program of the Association, the Board and any committee which, in the sole judgment of the Class "B" Member, would tend to impair rights of the Declarant or the Developer under the Declaration or these By-Laws, or interfere with development of or construction on any portion of the Properties, or diminish the level of services being provided by the Association.

(a) The Class "B" Member shall be given written notice of all meetings and proposed actions approved at meetings (or by written consent in lieu of a meeting) of the Association, the Board or any committee. Such notice shall be given by certified mail, return receipt requested, or by personal delivery at the address it has registered with the Secretary of the Association, which notice complies as to the Board meetings with Sections 3.8, 3.9 and 3.10 and which notice shall, except in the case of the regular meetings held pursuant to the By-Laws, set forth in reasonable particularity the agenda to be followed at said meeting; and

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(b) The Class "B" Member shall be given the opportunity at any such meeting to join in or to have its representatives or agents join in discussion from the floor of any prospective action, policy, or program which would be subject to the right of disapproval set forth herein.

No action, policy or program subject to the right of disapproval set forth herein shall be come effective or be implemented until and unless the requirements of subsections (a) and (b) above have been met.

The Class "B" Member, its representatives or agents shall make its concerns, thoughts, and suggestions known to the Board and/or the members of the subject committee. The Class "B" Member, acting through any officer or director, agent or authorized representative, may exercise its right to disapprove at any time within 10 business days following the meeting at which such action was proposed or, in the case of any action taken by written consent in lieu of a meeting, at any time within 10 business days following receipt of written notice of the proposed action. This right to disapprove may be used to block proposed actions but shall not include a right to require any action or counteraction on behalf of any committee, or the Board or the Association. The Class "B" Member shall not use its right to disapprove to reduce the level of services which the Association is obligated to provide or to prevent capital repairs or any expenditure required to comply with applicable laws and regulations.

(c) In the event the Board or the Association fails to comply with the obligations of the Association set forth in Declaration, as reasonably determined by the Declarant, the Declarant shall have the right (but not the obligation) to cause any such obligations to be satisfied, at the sole expense of the Association, including without limitation to cause the Property, the Buildings, (e.g., the exterior structures, roofs, etc.) and/or the Common Areas to be maintained in accordance with the Community-Wide Standards. In the event the Declarant advances any funds for the purpose described above, it shall be entitled to prompt reimbursement from the Association upon demand therefor.

3.20 Management. The Board of Directors may employ for the Association, a professional management agent or agents at such compensation as the Board may establish, to perform such duties and services as the Board shall authorize. The Board of Directors may delegate such powers as are necessary to perform the manager's assigned duties, but shall not delegate policy making authority or those duties set forth in Sections 3.18(a), 3.18(b), 3.18(f), 3.18(g) and 3.18(i). The Declarant, or an affiliate of the Declarant, may be employed as managing agent or manager.

The Board of Directors may delegate to one of its members the authority to act on behalf of the Board on all matters relating to the duties of the managing agent or manager, if any, which might arise between meetings of the Board.

3.21 Accounts and Reports. The following management standards of performance shall be followed unless the Board by resolution specifically determines otherwise:

- (a) accounting and controls should conform to generally accepted accounting principles;
- (b) cash accounts of the Association shall not be commingled with any other accounts;
- (c) no remuneration shall be accepted by the managing agent from vendors, independent contractors, or others providing goods or services to the Association, whether in the form of commissions, finder's fees, service fees, prizes, gifts, or otherwise; any thing of value received shall benefit the Association;
- (d) any financial or other interest which the managing agent may have in any firm providing goods or services to the Association shall be disclosed promptly to the Board;

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(e) commencing at the end of the quarter in which the first Unit is sold and closed, financial reports shall be prepared for the Association at least quarterly containing:

- (i) an income statement reflecting all income and expense activity for the preceding period on an accrual basis;
- (ii) a statement reflecting all cash receipts and disbursements for the preceding period;
- (iii) a variance report reflecting the status of all accounts in an "actual" versus "approved" budget format;
- (iv) a balance sheet as of the last day of the preceding period; and
- (v) a delinquency report listing all Owners who are delinquent in paying any assessments at the time of the report and describing the status of any action to collect such assessments which remain delinquent (Any assessment or installment thereof shall be considered to be delinquent on the 15th day following the due date unless otherwise specified by Board resolution); and
- (vi) an annual report consisting of at least the following shall be made available upon request to all Members within one hundred twenty (120) calendar days after the close of the fiscal year: (1) a balance sheet; (2) an operating (income) statement; and (3) a statement of changes in financial position for the fiscal year. Such annual report may be prepared on an audited, reviewed or compiled basis, as the Board determines.

3.22 Borrowing. The Association shall have the power to borrow money for any legal purpose; provided, the Board shall obtain Member approval in the same manner provided for Special Assessments in Section 7.5 of the Declaration if the proposed borrowing is for the purpose of making discretionary capital improvements and the total amount of such borrowing, together with all other debt incurred within the previous twelve (12) month period, exceeds or would exceed ten percent (10%) of the budgeted gross expenses of the Association for that fiscal year.

3.23 Right to Contract. The Association shall have the right to contract, with any Person for the performance of various duties and functions. This right shall include, without limitation, the right to enter into common management, operational, or other agreements with trusts, condominiums, cooperatives, or neighborhood and other owners or residents associations, within and outside the Properties; provided, any common management agreement shall require the consent of a majority of the total number of directors of the Association.

3.24 Enforcement. In addition to such other rights as are specifically granted under the Declaration, the Board shall have the power to impose reasonable monetary fines, which shall constitute a lien upon the Unit of the violator, and to suspend an Owner's right to vote for violation of any duty imposed under the Declaration, these By-Laws, or any Association rules. In addition, the Board may suspend any services provided by the Association to an Owner or the Owner's Unit if the Owner is more than thirty (30) calendar days delinquent in paying any assessment or other charges owed to the Association. In the event that any occupant, tenant, employee, guest or invitee of a Unit violates the Declaration, By-Laws, or a rule and a fine is imposed, the fine shall first be assessed against the occupant; provided, however, if the fine is not paid by the occupant within the time period set by the Board, the fine shall be assessed against the Unit and the Owner thereof upon notice from the Association. The failure of the Board to enforce any provision of the Declaration, By-Laws, or any rule shall not be deemed a waiver of the right of the Board to do so thereafter.

(a) Notice. Prior to imposition of any sanction hereunder or under the Declaration, the Board or its delegate shall serve the alleged violator with written notice describing (i) the nature of the alleged violation, (ii) the proposed sanction to be imposed, (iii) a period of not less than ten (10) calendar days within which the alleged violator may present a written request for a hearing to the Board or the Covenants Committee, if one has been appointed pursuant to Article V; and (iv) a statement that the proposed sanction shall be imposed as contained in the notice unless a challenge is begun within ten (10) calendar days of the notice. If a timely challenge is not made, the sanction stated in the notice shall be imposed; provided, the Board or Covenants Committee may, but shall not be obligated to, suspend any proposed sanction if the violation is cured within the ten (10) day period. Such suspension shall not constitute a waiver of the right to sanction future violations of the same or other provisions and rules by any Person.

(b) Hearing. If a hearing is requested within the allotted ten (10) day period, the hearing shall be held before the Covenants Committee, if one, or if none, then before the Board in executive session. The alleged violator shall be afforded a reasonable opportunity to be heard. Prior to the effectiveness of any sanction hereunder, proof of proper notice shall be placed in the minutes of the meeting. Such proof shall be deemed adequate if a copy of the notice, together with a statement of the date and manner of delivery, is entered by the officer, director, or agent who delivered such notice. The notice requirement shall be deemed satisfied if the alleged violator or its representative appears at the meeting. The minutes of the meeting shall contain a written statement of the results of the hearing and the sanction, if any, imposed.

(c) Appeal. Following a hearing before the Covenants Committee, the violator shall have the right to appeal the decision to the Board of Directors. To exercise this right, a written notice of appeal must be received by the manager, President, or Secretary of the Association within ten (10) calendar days after the hearing date.

(d) Additional Enforcement Rights. Notwithstanding anything to the contrary in this Article, the Board may elect to enforce any provision of the Declaration, these By-Laws, or the rules of the Association by self-help (specifically including, but not limited to, the towing of vehicles that are in violation of parking rules) or by suit at law or in equity to enjoin any violation or to recover monetary damages or both, without the necessity of compliance with the procedure set forth above. In any such action, to the maximum extent permissible, the Owner or occupant responsible for the violation of which abatement is sought shall pay all costs, including reasonable attorney's fees actually incurred. Any entry onto a Unit for purposes of exercising this power of self-help shall not be deemed as trespass.

Article IV

Officers

4.1 Officers. The officers of the Association shall be a President, Vice President, Secretary and Treasurer. The President, Vice President and Secretary shall be elected from among the members of the Board; other officers may, but need not be members of the Board. The Board may appoint such other officers, including one or more Assistant Secretaries and one or more Assistant Treasurers, as it shall deem desirable, such officers to have such authority and perform such duties as the Board prescribes. Any two or more offices may be held by the same person, except the offices of President and Secretary shall not be held by the same person.

4.2 Election and Term of Office. The Board shall elect the officers of the Association at the first meeting of the Board following each annual meeting of the Members, to serve until their successors are elected.

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4.3 Removal and Vacancies. The Board may remove any officer whenever in its judgment the best interests of the Association will be served, and may fill any vacancy in any office arising because of death, resignation, removal, or otherwise, for the unexpired portion of the term.

4.4 Powers and Duties. The officers of the Association shall each have such powers and duties as generally pertain to their respective offices, as well as such powers and duties as may specifically be conferred or imposed by the Board of Directors and the officers shall act in accordance with the standards for officers of a non-profit corporation set forth in N.C.G.S. §55A-8-42. The President shall be the chief executive officer of the Association. The Treasurer shall have primary responsibility for the preparation of the budget as provided for in the Declaration and may delegate all or part of the preparation and notification duties to a finance committee, management agent, or both.

4.5 Resignation. Any officer may resign at any time by giving written notice to the Board of Directors, the President, or the Secretary. Such resignation shall take effect on the date of the receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

4.6 Agreements, Contracts, Deeds, Leases, Checks, Etc. All agreements, contracts, deeds, leases, checks, and other instruments of the Association shall be executed by at least two officers or by such other person or persons as may be designated by Board resolution.

4.7 Compensation. Compensation of officers shall be subject to the same limitations as compensation of directors under Section 3.13.

Article V

Committees

5.1 General. The Board may appoint such committees as it deems appropriate to perform such tasks and to serve for such periods as the Board may designate by resolution. Each committee shall operate in accordance with the terms of such resolution.

5.2 Covenants Committee. In addition to any other committees which the Board may establish pursuant to the Declaration, these By-Laws and, specifically, Section 5.1, the Board may appoint a Covenants Committee consisting of at least three and no more than seven Members. Acting in accordance with the provisions of the Declaration, these By-Laws, and resolutions the Board may adopt, the Covenants Committee, if established, shall be the hearing tribunal of the Association and shall conduct all hearings held pursuant to Section 3.24 of these By-Laws.

Article VI

Miscellaneous

6.1 Fiscal Year. The fiscal year of the Association shall be the calendar year unless the Board establishes a different fiscal year by resolution.

6.2 Parliamentary Rules. Except as may be modified by Board resolution, Robert's Rules of Order (current edition) shall govern the conduct of Association proceedings when not in conflict with North Carolina law, the Articles of Incorporation, the Declaration, or these By-Laws.

6.3 Conflicts. If there are conflicts between the provisions of North Carolina law, the Articles of Incorporation, the Declaration, and these By-Laws (in that order) shall prevail.

6.4 Books and Records.

(a) Inspection by Members and Mortgagees. The Board shall make available for inspection and copying by any holder, insurer or guarantor of a first Mortgage on a Unit, any Member, or the duly appointed representative of any of the foregoing at any reasonable time and for a purpose reasonably related to his or her interest in a Unit: the Declaration, By-Laws and Articles of Incorporation, any amendments to the foregoing, the rules of the Association, the membership register, books of account, and the minutes of meetings of the Members, the Board, and committees. The Board shall provide for such inspection to take place at the office of the Association or at such other place within the Properties as the Board shall designate.

(b) Rules for Inspection. The Board shall establish reasonable rules with respect to:

- (i) notice to be given to the custodian of the records;
- (ii) hours and days of the week when such an inspection may be made; and
- (iii) payment of the cost or reproducing copies of documents requested.

(c) Inspection by Directors. Every director shall have the absolute right at any reasonable time to inspect all books, records, and documents of the Association and the physical properties owned or controlled by

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the Association. The right of inspection by a director includes the right to make a copy of relevant documents at the expense of the Association.

6.5 Notices. Except as otherwise provided in the Declaration or these By-Laws, all notices, demands, bills, statements, and other communications under the Declaration or these by-Laws shall be in writing and shall be deemed to have been duly given if delivered personally or if sent by United States mail, first class postage prepaid:

- (i) if to a Member, at the address which the Member has designated in writing and filed with the Secretary or, if no such address has been designate, at the address of the Unit of such Member; or
- (ii) if to the Association, the Board of Directors, or the managing agent, at the principal office of the Association or the managing agent, or at such other address as shall be designated by notice in writing to the Members pursuant to this Section.

6.6 Amendment.

(a) By Class "B" Member. Until conveyance of the first Unit to a Person other than a Builder, the Class "B" Member may amend these By-Laws, subject to the approval requirements set forth in the Declaration, if applicable. Thereafter, the Class "B" Member may amend these By-Laws if such amendment is specifically required to enable the U.S. Department of Veterans Affairs, the U.S. Department of Housing and Urban Development, the Federal National Mortgage Association, or the Federal Home Loan Mortgage Corporation, to make, purchase, insure or guarantee mortgage loans on the Units; provided, however, any such amendment shall not adversely affect the title to any Unit unless the Owner shall consent thereto in writing.

(b) By Members Generally. Except as provided above, these By-Laws may be amended only by the affirmative vote or written consent, or any combination thereof, of Members representing a majority of the total Class "A" votes in the Association, and the consent of the Class "B" Member, if such exists. In addition, the approval requirements set forth in the Declaration shall be met, if applicable. Notwithstanding the above, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under than clause.

(c) Validity and Effective Date of Amendments. Amendments to these By-Laws shall become effective upon recordation in the Public Records, unless a later effective date is specified therein. Any procedural challenge to an amendment must be made within six months of its recordation or such amendment shall be presumed to have been validly adopted. In no event shall a change of conditions or circumstances operate to amend any provisions of these By-Laws.

No amendment may remove, revoke, or modify any right or privilege of Declarant or the Class "B" Member without the written consent of Declarant, the Class "B" Member, or the assignee of such right or privilege.

If a Member consents to any amendment to the Declaration or these By-Laws, it will be conclusively presumed that such Member has the authority so to consent and no contrary provision in any Mortgage or contract between the Member and a third party will affect the validity of such amendment.

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Laura M. Riddick
Register of Deeds
Wake County, NC



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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___ of Cynthia B Anemiq

____ 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: Dan Stewart
Assistant/Deputy Register of Deeds

This Customer Group
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BK011344PG01750

WAKE COUNTY, NC 464
LAURA M RIDDICK
REGISTER OF DEEDS
PRESENTED & RECORDED ON
05/03/2005 AT 15:26:42

BOOK:011344 PAGE:01750 - 01752

Prepared by and hold for:

Tina Frazier Pace
Hatch, Little & Bunn, LLP (Box 80)

NORTH CAROLINA

WAKE COUNTY

**ASSIGNMENT OF DECLARANT RIGHTS TO DECLARATION OF
COVENANTS CONDITIONS AND RESTRICTIONS
FOR WESTHAVEN TOWNHOMES**

THIS ASSIGNMENT OF DECLARANT RIGHTS is made this 27th day of March, 2005, by Episcopal Housing Ministry, a North Carolina Nonprofit Corporation, (hereinafter "Declarant") to Central Carolina Bank, a division of National Bank of Commerce, Memphis, TN, (hereinafter "Assignee");

WHEREAS, Declarant executed a Declaration of Covenants, Conditions, and Restrictions for Westhaven Townhomes, recorded in Book 9533, Page 2013 of the Wake County Registry;

WHEREAS, the Declaration provides that the Declarant's rights, powers, duties and obligations may be assigned and transferred to a successor, successor-in-title, or assign upon a duly-executed Assignment recorded in the Office of the Register of Deeds of Wake County;

WHEREAS, the Episcopal Housing Ministry executed a Note and Deed of Trust for the benefit of Central Carolina Bank, secured by the property commonly known as the Westhaven Townhomes development and more particularly described in the Deed of Trust which was recorded in Book 9092, Page 1000 in the Office of the Wake County Register of Deeds; and whereas the Episcopal Housing Ministry defaulted on said obligation, culminating in the foreclosure of said Property wherein Central Carolina Bank became the highest bidder and was conveyed the Property by Substitute Trustee's Deed dated October 20, 2004 and recorded in Book 11065, Page 14 in the Office of the Wake County Register of Deeds.

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WHEREAS, by virtue of the foreclosure, Declarant desires to assign all of its rights, powers, duties, reservations and obligations as Declarant under the Declaration and Covenants to Assignee, and Assignee desires to accept such assignment and assume such rights powers, duties, reservations and obligations;

NOW, THEREFORE, Declarant hereby assigns, transfers, and conveys all of its rights, powers, duties, reservations, and obligations to Central Carolina Bank; and Central Carolina Bank accepts such assignment and acknowledges that it assumes all rights, powers, duties, reservations, and obligations granted to or imposed upon the Declarant by the Declaration of Covenants, Conditions, and Restrictions for Westhaven Townhomes.

IN WITNESS WHEREOF, the undersigned has caused this instrument to be duly executed under seal this the day and year first above written.

EPISCOPAL HOUSING MINISTRY, INC.

BY: William R. Shenton
William R. Shenton, President

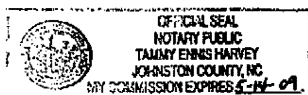
State of North Carolina
County of Wake

I, TAMMY ENNIS HARVEY, certify that William R. Shenton personally came before me this day and acknowledged that he is the President of Episcopal Housing Ministry, Inc. and that he, as President, being authorized to do so, executed the foregoing on behalf of the corporation.

Witness my hand and official seal this the 27th day of APRIL, 2005.

Tammy Ennis Harvey
Notary Public

My Commission Expires: 5-14-09



BK011344PG01752



BOOK:011344 PAGE:01750 - 01752

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___ of Tammy Ennis Harvey

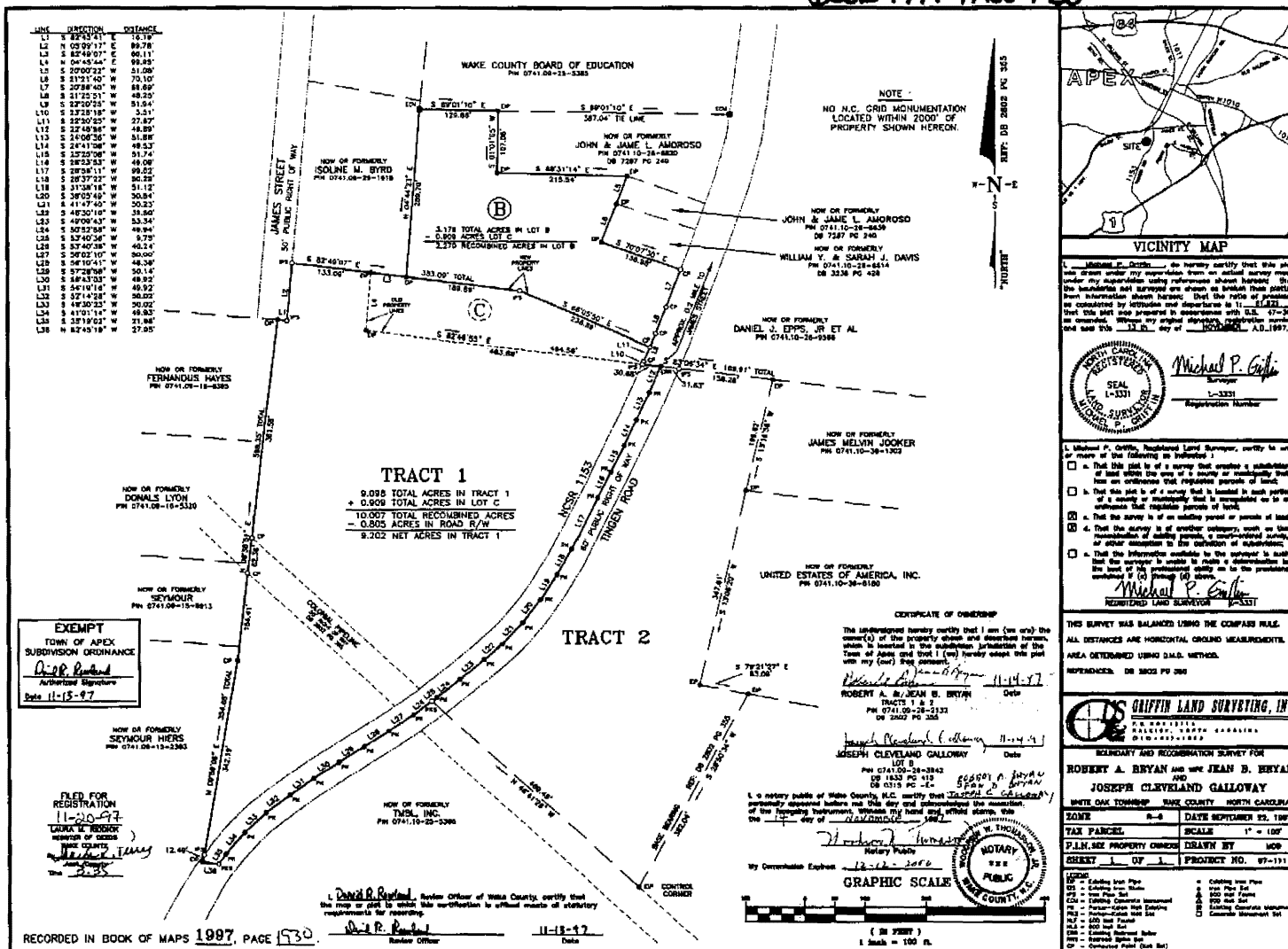
_____, Notary(ies) Public is (are) certified to be correct. This instrument
and this certificate are duly registered at the date and time and in the book and
page shown on the first page hereof.

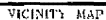
Laura M. Riddick, Register of Deeds

By: George W. Pearson
Assistant/Deputy Register of Deeds

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3 # of Pages





12/17/01
DATE

Keith A. Landford
MANAGER - SUPERVISOR

12/18/01
DATE

Dee K. Landford
MANAGER - SUPERVISOR

ACCORDING TO F.B.I. FLINT INVESTIGATOR HAVE BEEN
371330440 E. THE PROPERTY OWNED HEREON IS NO
LOCATED WITHIN A 100 YEAR FLOOD AREA.

NOTES

NOTES

THIS TOWNPARK PROJECT HAS BEEN APPROVED AS AN OPEN SPACE DESIGNATED RESIDENTIAL SUBDIVISION. THIS PROJECT MEETS THE CODES REQUIREMENT BY PROVIDING OPEN SPACE, STOPS OF SHADING TREES, AND BY POSITIONING THE UNITS IN A MORE TRADITIONAL MANNER.

THIS IS AN OPEN SPACE DESIGNED RESIDENTIAL SUBDIVISION PERMISSIBLE TO THE AREA CODE OF ORDINANCES AND MAY NOT BE FURTHER SUBDIVIDED.

COMMON ELEMENTS TO BE MAINTAINED BY HOMEOWNERS ASSOCIATION.

THIS PROPERTY IS NOT LOCATED WITHIN EITHER OF THE TOWNS TWO PROTECTED WATERSHED DISTRICTS.

REFERENCE	EE	1967	PAGE	1948
	W	1983	PAGE	18,36
	W	1984	PAGE	23,3
	W	1988	PAGE	248

State of North Carolina
Town of Apex
I, Keith A. Landford Review Officer of the Town of Apex, certify
that the map or plat to which this certification is applied meets
all statutory requirements for recording
12/17/01
Date Keith A. Landford
Review Officer

NOTE: SEE SHEET 2 OF 6 FOR WATER EASEMENT LINE TABLE DATA

[illegible]

PHASE LINE TABLE		
LINE	BEARING	DISTANCE
PHASE 1	S73°00'00"E	16.17
PHASE 2	S18°45'31"E	48.81
PHASE 3	S84°00'00"E	148.72

SECTOR EASEMENT LINE TABLE		
LINE	BEARING	DISTANCE
SECTOR 1	N00°42'01"W	67.94
SECTOR 2	N81°00'23"W	41.30
SECTOR 3	S18°10'30"E	50.77
SECTOR 4	S84°27'07"E	126.45
SECTOR 5	S04°30'37"E	112.46
SECTOR 6	S18°10'30"W	50.77
SECTOR 7	S84°27'07"W	126.45
SECTOR 8	S04°30'37"W	112.46

CURVE TABLE						
CURVE	LENGTH	RADIUS	DELTA	TANGENT	CHORD	
C1	31.81	25.00	71.10 DE	18.24	53.228.22'	25.80
C2	9.87	120.00	11.37 DE	1.64	105.322.33'	9.91
C10	54.91	25.00	114.25 DE	13.63	211.240.79'	41.47
C15	13.44	125.00	13.22 DE	2.07	144.248.25'	16.40
C16	132.42	175.00	15.35 DE	23.00	385.190.13'	128.49

AREA SUMMARY	
5' R/W DEDICATION	0.738 ACRE
PUBLIC R/W	1.600 ACRES
12 LOTS	0.298 ACRE
OPEN SPACE	0.033 ACRE
COMMON ELEMENTS	0.467 ACRE
TOTAL	2.534 ACRES

FILED FOR
REGISTRATION
13-17-01
LAURA M. REDDICK
REGISTER OF DEEDS
WAKE COUNTY
BY *[Signature]*
Notary Public
Term 13-08-12

[illegible]

GRAPHIC SCALE

[illegible]

6-3351
Applicant: Mr.

[illegible][illegible]

NORTH CAROLINA
 (02842) COUNTY
 1. William H. Hester
 and State of North Carolina, the PUBLIC OF THIS COUNTY
 BY AND IN HIS DAY AND WHEREFORE THAT HE
 is WILLIAM H. HESTER PROFESSIONAL MECHANIC
 A CORPORATION AND THAT OF AUTHORITY IN
 AND AS WELL AS OF THE COUNCILMAN OF
 WHEREFORE HE IS ENTITLED TO BE
 FROM WILLIAM H. HESTER PROFESSIONAL MECHANIC
 AND ATTESTED BY ME
 (Signature)
 WITNESSES MY HAND AND OFFICES SEE FILED
 DAY OF February 2001
William H. Hester
 MY COMMISSION EXPIRES
 No Commission Expires on

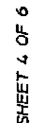
INTERNAL	
MINIMUM BUILDING SETBACKS	
FRONT YARD	10'
BEHINDING TO BUILDING	10'
SIDE YARD	10'
FROM BUFFER	10'

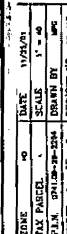
PERIMETER	
MINIMUM BUILDING SETBACKS	
FRONT YARD	25'
REAR YARD	50'
SIDE YARD	25'
FROM BUFFER	10'

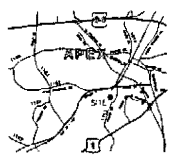
RECORDED IN BOOK OF MAPS 2001 . PAGE 2352

5000 PLAT 5000/4500 FOR
WESTHAVEN TOWNHOMES
 OWNER: EPISCOPAL HOUSING MINISTRY, INC.
 WHITE OAK TOWNSHIP WAVE COUNTY NORTH CAROLINA

DATE	10/23/01
SCALE	1" = 100'
DRAWN BY	WPG
PROJECT NO.	97-117







VICINITY MAP

[illegible]

Michael Griffin

L-5351
Ringside ylläs. Nauru



4. Michael P. Miller, Registered Local Supervisor, hereby certifies to the truth of the following on oath/affirm:
- ☐ a) That this paid is all a survey that creates a subdivision of land over the area of a county or maintaining that said subdivisions that create a subdivision of land.
- ☐ b) That this paid is all a survey that is located in each county of a county or maintaining that in maintaining all an ordinance that requires permits of land.
- ☒ c) That this survey is of creating permits of land.
- ☒ d) That this survey is of creating permits of land and the recommendations of making permits a county-owned survey or other agencies in the jurisdiction of subdivision.
- ☐ e) That the information available to the supervisor is made that the survey is of creating permits of land and the level of the professional survey is on the same procedure as defined by (a) through (f) above.
- Michael Miller

STATEMENTS OF APPROVAL OF THE DESIGN AND INSTALLATION OF
SPECIAL VEHICLES AND OTHER REGULARLY APPROPRIATE

I HEREBY CERTIFY THAT ALL SURVEYS, INSPECTIONS AND OTHER REGULAR
APPROPRIATE HAVE BEEN CONDUCTED IN AN ACCORDANT MANNER
ACCORDING TO THE REQUIREMENTS AND STANDARDS OF THE
QUALITY OF THE INSTALLATION OF THE ABOVE APPROPRIATE
AN APPROVED AND NUMBER SATISFACTORY TO THE STATE OF
AND HAVE BEEN RECEIVED

07-20-02
DATE

Paul A. Roubal
SUPERVISOR ADMINISTRATION

5-1-02
DATE

Robert A. Grant, Jr
Treasurer

1. I HEREBY CERTIFY THAT THE INFORMATION PLAIN ABOVE WRITING WAS
OBTAINED FROM SOURCE BY THE INVESTIGATION AFFILIATED FOR
FEDERAL BUREAU OF INVESTIGATION, WITH THE EXCEPT OF SUCH INFORMATION
AS MAY BE NECESSARY TO THE PROSECUTION OF SUCH CASES AND THAT THE
SOURCE HAS BEEN ADVISED OF THE RIGHTS OF THE OTHERS AND OF THE RIGHTS OF
THE SOURCE OF THIS INFORMATION.

03-20-03
[Signature]
SPECIAL AGENT IN CHARGE

State of North Carolina
Town of Apex
I, DAVIDE A. GREGG, Review Officer of the Town of Apex, certify
that the map or plat to which this certification is affixed meets
all statutory requirements for recording.
07-10-02 DAVIDE A. GREGG
Date Review Officer

THIS SURVEY WAS BALANCED USING THE COMPASS RULE.
ALL DISTANCES ARE HORIZONTAL. CRITICAL MEASUREMENTS
WERE DETERMINED USING B.M.D. METHOD.

ACCORDING TO F.E.M.A. FLOOD INSURANCE RATE MAP
FEMA-5802-E, THE PROPERTY SHOWN HEREON IS NOT
LISTED WITHIN A 100 YEAR FLOOD AREA.

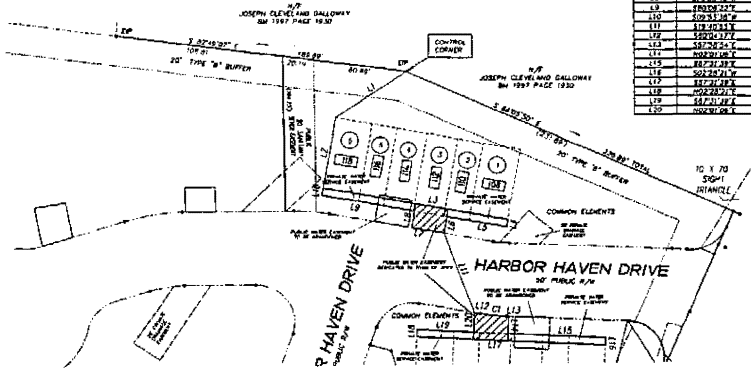
NOR ARE OTHER MONUMENTATION WITHIN 1000' OF SITE.

REFERENCES

BM	1987	PAGE	1849
BM	1997	PAGE	1830
BM	1998	PAGE	202
BM	1998	PAGE	508
BM	2001	PAGE	7357-7360

CURVE TABLE					
CURVE	LENGTH	BACKS	TANGENT	CHORD BEARING	CHORD
C1	17.26	125.00	8.61	3040' 25"	17.24

LOW TAIR		
LOW	RAJAH	OSTAJAH
1.1	55671.14 W	25.55
1.2	50935.18 W	48.33
1.3	58010.27 W	121.87
1.4	50923.10 Y	3.60
1.5	58010.27 W	58.74
1.6	50935.18 W	121.87
1.7	58010.27 W	21.62
1.8	50935.18 W	18.48
1.9	58010.27 W	81.50
2.0	50935.18 W	3.60
2.1	58010.27 W	57.31
2.2	50935.18 W	121.87
2.3	58010.27 W	1.53
2.4	50935.18 W	1.53
2.5	58010.27 W	10.75
2.6	50935.18 W	81.50
2.7	58010.27 W	3.60
2.8	50935.18 W	121.87
2.9	58010.27 W	3.60
3.0	50935.18 W	36.84
3.1	58010.27 W	18.03



VAL PLAT EASEMENT REVISION PLAT
THAVEN TOWNHOMES
INNER EPISCOPAL HOUSING MINISTRY INC.
K TOWNSHIP MAKE COUNTY NORTH CAROLINA

