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WAKE COUNTY, NC 360
LAURA M RIDDICK
REGISTER OF DEEDS
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# DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR POINTE VIEW TOWNS

Prepared by and Return To:
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NORTH CAROLINA

WAKE COUNTY

THIS DECLARATION is made this 16th day of August, 2004, by **PETERSON PROPERTIES, LLC**, a North Carolina limited liability company, hereinafter referred to as the "Declarant".

WITNESSETH:

WHEREAS, Declarant is the owner of certain real property (the "Properties") situate in the Town of Cary, County of Wake, State of North Carolina, which is more particularly described as follows:

> BEING all of the real property as shown on a plat (the "Plat") entitled "SUBDIVISION PLAT OF POINTE VIEW TOWNS PROPERTY OF PETERSON PROPERTIES, LLC" prepared by Aiken & Yelle Associates, PA and recorded in Book of Maps 2004, Pages 1334 and 1335, in the Office of the Register of Deeds of Wake County, North Carolina, including but not necessarily limited to Lots 1 through 16, inclusive, and the private streets and other Common Area (as shown on the Plat and as defined in this Declaration); and

WHEREAS, it is the intent of the Declarant to cause the Properties to be subjected to this Declaration of Covenants, Conditions and Restrictions.

NOW, THEREFORE, Declarant hereby declares that the Properties, including without limitation, every Lot (as hereinafter defined) which is a part of the Properties, shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with such real property and shall be binding on all parties having any right, title or interest in the above-described property or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

## ARTICLE 1-DEFINITIONS

SECTION 1.01. "Association" shall mean and refer to Pointe View Towns Owners Association, Inc., a North Carolina non-profit corporation, its successors and assigns.

SECTION 1.02. "Amenities" means the improvements, if any, constructed, erected, installed or existing on the Common Area for the common use, benefit and enjoyment of the Properties by the Owners, such as clubhouses, playgrounds and greenways. Initially, no Amenities are proposed.

SECTION 1.03. "Architectural Committee" means the Declarant, the Board of Directors or the committee appointed by the Board of Directors acting as the Architectural Committee as provided in Section 5.03 of this Declaration.

SECTION 1.04. "Board of Directors" or "Board" means those persons elected or appointed and acting collectively as the Directors of the Association.

SECTION 1.05. "City" shall mean the Town of Cary, North Carolina.

SECTION 1.06. "Common Areas" shall mean all real property owned by the Association and the easements granted to the Association for the common use, benefit and enjoyment of the Properties by the Owners. Common Areas shall also mean the facilities constructed, erected or installed on the real property which is part of the Common Areas for the use, benefit and enjoyment of the Owners, including without limitation, the Amenities and the following:

A. All central appurtenant installations for services such as electricity, gas, telephone and cable television;

B. All water lines and mains, sanitary sewer system and storm sewer system outside of public street rights-of-way serving more than one Lot;

C. Private streets, drives, parking areas, medians traffic and landscape islands on private streets, street yard areas, subdivision signs and entrances on the Properties or serving the Properties, but excluding driveways serving individual Lots;

D. All Amenities for the use and enjoyment of the Members;

E. All of the parts of the Properties and facilities and Amenities existing in or upon the Properties for common use which is necessary or convenient to the existence, enjoyment, use, maintenance or safety of the Properties;

F. Any storm water detention easements, drainage easement and Reservoir Watershed Protection Access and Maintenance Easement shown on the Plat or future map recordings however named; and

G. Open space, including any permanently protected undisturbed open space areas.

SECTION 1.07. "Common Expenses" shall mean and include:

A. All sums lawfully assessed by the Association against its Members;

B. Expenses for maintenance as further provided in this Declaration or the Association's Organizational Documents;

C. Expenses of administration, maintenance, repair, or replacement of the Common Areas;

D. Expenses declared to be Common Expenses by the provisions of this Declaration or the Association's Organizational Documents;

E. Premiums for hazard, liability and such other insurance as this Declaration or the Association's Organizational Documents may require or authorize the Association to purchase or which the Association is required by law to purchase;

F. Ad valorem taxes and assessment charges lawfully levied against the Common Areas owned in fee simple by the Association, including but not limited to those taxes and assessments set forth in Section 2.07 below;

G. Expenses agreed by the Members to be Common Expenses of the Association;

H. Costs and expenses associated with the Association's purchase and reconstruction of Townhomes as provided in this Declaration;

I. Unpaid assessments resulting from the purchase of a Townhome at a foreclosure sale (such assessment shall be collectible from all Members of the Association, including the purchaser at the foreclosure sale, his successors and assigns).

J. Utilities used in connection with the Common Area;

K. Fees for services of accountants, attorneys, managers and other professionals engaged by the Association;

L. Payments to the City and other governmental bodies as required by applicable Laws, including but not limited to, payments with respect to the storm water detention easement and Stormwater Control Measures;

M. the costs and expenses of maintenance of the storm water detention easement and Stormwater Control Measures; and

N. All expenses classified as Common Expenses pursuant to the Planned Community Act.

SECTION 1.08. "Declarant" shall mean and refer to Peterson Properties, LLC, a North Carolina limited liability company, and its successors and assigns as provided in the Planned Community Act.

SECTION 1.09. "Declaration" shall mean and refer to this Declaration of Covenants, Conditions and Restrictions for Pointe View Towns in the Town of Cary, N.C. and all valid amendments hereto applicable to the Properties recorded in the Office of the Register of Deeds of Wake County, North Carolina.

SECTION 1.10. "Eligible Mortgage Holder" shall mean a holder, insurer, or guarantor of a first Mortgage on a Lot who has requested notice of certain matters from the Association as provided in this Declaration or the Organizational Documents.

SECTION 1.11. "Law" shall mean and refer to any act, statute, law ordinance, rule, regulation, order or decision of a municipal, county, state or federal government, governmental body or official having jurisdiction over the Properties and any order, judgment or decision of a court of competent jurisdiction.

SECTION 1.12. "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map of the Properties (provided said map has been approved by Declarant or the Association), with the exception of the Common Areas owned in fee simple. Except where otherwise indicated by context, the term "Lot" shall include the Improvements on such Lot.

SECTION 1.13. "Lot in Use" shall mean any Lot on which a Townhome has been fully constructed and for which a certificate of occupancy or similar certificate has been issued by the appropriate governmental agency.

SECTION 1.14. "Map" or "Maps" shall mean and refer to any map of the Properties constituting additional phases (if they are annexed pursuant to Article 10 hereof) which may be recorded by Declarant in the Wake County Registry hereafter.

SECTION 1.15. "Member" shall mean and refer to every person or entity who holds membership in the Association.

SECTION 1.16. "Mortgage" means any mortgage, deed of trust, and any and all similar instruments used for the purpose of conveying or encumbering real property as security for the payment or satisfaction of an obligation.

SECTION 1.17. "Mortgagee" shall include a beneficiary or holder of a deed of trust, as well as a mortgagee under a mortgage.

SECTION 1.18. "Organizational Documents"shall mean and refer to the Articles of Incorporation and Bylaws of the Association, and all lawful amendments thereto. The Articles of Incorporation of the Association and the Bylaws of the Association are attached to this Declaration as Exhibits A and B, respectively. Unless required by applicable Law, including but not limited to the ordinances and regulations of the City, amendments to an Organizational Document are not required to be recorded in the Wake County Registry (as defined in Section 12.05) as an amendment to this Declaration.

SECTION 1.19. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple interest (or undivided fee simple interest) in any Lot which is a part of the Properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

SECTION 1.20. "Person" means any individual, corporation, partnership, limited liability company, association, trustee, or other legal entity.

SECTION 1.21. "Planned Community Act" shall mean the provisions of Chapter 47F of the General Statutes of North Carolina applicable to the Properties, as such provisions shall be amended and recodified from time to time.

SECTION 1.22. "Properties" shall mean and refer to that certain real property described in this Declaration affecting real property now within the jurisdiction of the Association and such additions thereto as hereafter may be annexed and brought within the jurisdiction of the Association.

SECTION 1.23. "Stormwater Control Measures" shall mean and refer to private drain pipes, grass swales, level spreaders, storm water detention ponds, its inlets and outlets, and other reservoir watershed protection and/or stormwater control facilities, structures, appurtenances and vegetation located on the Property together with drainage easements, however named, and all other storm drainage pipes, which serve more than one Lot that are located outside public street rights-of-way.

SECTION 1.24. "Townhome" or "Townhouse" shall mean and refer to an attached single family dwelling or place of residence constructed upon a Lot within the Properties and constituting a part of a building.

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## ARTICLE 2-PROPERTY RIGHTS

SECTION 2.01. OWNER'S EASEMENTS OF ENJOYMENT. Every Owner shall have a right and easement of use and enjoyment in and to the Common Area and a right and easement over the Common Area for access, ingress and egress to and from streets, parking areas and walkways and to and from such Owner's Lot, which right and easement shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

A. Admission and Other Fees: Subject to the provisions of applicable Law, the right of the Association to regulate the use of and to charge reasonable admission and other fees for the use of any Amenities situated upon the Common Area;

B. Suspension of Use of Common Area: The right of the Association to suspend the right to use any Amenities by any Owner, his family, occupants, tenants, guests, and invitees during any period in which such Owner shall be in default in the payment of any assessment levied by the Association. Such rights also may be suspended, after notice and hearing, for the period of the infraction plus a reasonable period not to exceed sixty (60) days, for infraction or violation of any provision of this Declaration, the Organizational Documents or published rules and regulations of the Association;

C. Dedication and Transfer of Common Area: Except with respect to easements granted by the Association pursuant to Section 9.05 of this Declaration, and except as restricted by applicable Law, including but not limited to the ordinances, regulations and procedures, including variances, of the City, the right of the Association to dedicate or transfer all or part of the Common Area to any public agency, authority or utility, or for such purposes as may be agreed to by the Members, and subject to such conditions as may be agreed to by the Members, and provided that said dedication or transfer shall be approved as provided herein. Except with respect to easements granted by the Association pursuant to Section 9.05 of this Declaration, and no such dedication or transfer shall be effective unless Members entitled to cast at least 80% of the votes of the entire membership, plus at least 67% of the votes of the membership excluding the Declarant, have signed a written instrument consenting or agreeing to such dedication or transfer and unless such other agreement or consent as then required by the Planned Community Act and other applicable Law, including but not limited to the ordinances, regulations and procedures, including variances, of the City, has been satisfied. Any such dedication or transfer shall be made subject to the rights and easements of the Association and the Owners established hereunder, including but not limited to every Owner's easement for access, ingress and egress right to such Owner's Lot and use of the Common Areas;

D. Guests: The right of the Association to limit the number of guests that a Member may allow to use the Common Area;

E. Borrowing for Improvements: The right of the Association, in accordance with its Organizational Documents and the Planned Community Act, to borrow money for the purpose of constructing, repairing, or improving the Common Area, including but not limited to the Amenities (or any portion thereof) and to the Stormwater Control Measures and in aid thereof, with the assent of Members entitled to at least 80% of the votes of the entire membership, plus at least 67% of the votes of the membership excluding the Declarant, and in accordance with the provisions of the Planned Community Act, to mortgage, pledge, encumber or hypothecate said Common Area; provided, however, the right of such Mortgagee shall be subordinate to the rights and easements of the Association and the Owners established hereunder;

F. Use of Common Area: The right of the Association, through its Board of Directors, to determine the time and manner of use of the Common Areas and Amenities, if any, by the Members and others and to formulate, publish and enforce rules and regulations, and specifically including, but not limited to, the right to make permanent and temporary assignment of parking spaces and to make rules and regulations concerning parking;

G. Easements: The right of the Declarant, during the period of Class B membership, with regard to the Properties which may be owned for the purpose of development, to grant easements in and to the Common Area to any public agency, authority, or any utility for such purposes as benefits the Properties or any portion thereof. This Section 2.01(G) may not be amended or deleted, without the written consent of Declarant;

H. Driveways: The right and easement of individual Owners for driveways and walkways as provided in this Declaration;

I. Exchanges: The right of the Association, as provided by and consistent with applicable Laws, to exchange all or part of the Common Area for other real property and consideration of like value and utility subject to the provisions of the Planned Community Act;

J. Owner's Maintenance Easement: The right and easement of individual Owners to maintain, repair and reconstruction of the Townhome on such Owner's Lot as provided in Section 9.09 of this Declaration; and

K. Rules and Regulations: The right of the Board to formulate, publish and enforce rules and regulations as provided in this Declaration.

SECTION 2.02. DELEGATION OF USE. Any Owner may delegate his right of use and enjoyment to the Common Area, including but not limited to the Amenities, to the members of his family, his tenants, contract purchasers or guests, who reside on such Owner's Lot, subject to the provisions of this Declaration.

SECTION 2.03. TITLE TO COMMON AREA. The Declarant covenants for itself, its heirs, successors and assigns, that in accordance with the Planned Community Act it will convey fee simple title in the Common Area to the Association, free and clear of all encumbrances and liens, except then current year's ad valorem real property taxes, utility, drainage and other easements as provided in this Declaration or as shown on recorded plats of the Properties, and an easement of enjoyment to which the Owners are entitled to share. Title to Common Area within real property annexed pursuant to this Declaration shall be similarly conveyed to the Association. The Common Area shall be preserved for the perpetual benefit of the Owners of the Lots and the Common Area is restricted against private or public ownership for any other purpose other than as provided by the Planned Community Act and applicable Law. Common Area shall not be subsequently subdivided or conveyed by the Association except as permitted by and in accordance with this Declaration, the Planned Community Act and other applicable Law.

SECTION 2.04. TELEVISION ANTENNAS. The Association may provide, but is not required to provide, one or more cable television or telecommunication systems, central television antennas or other telecommunications-receiving devices for the convenience of the Members. The costs of services provided under these contracts may be included in annual or special assessments applicable to the Lots. The Association may regulate or prohibit the erection of antennas, satellite dishes and related equipment on any Lots in accordance Section 8.05 of this Declaration. No exterior antennas, dishes, towers, or other transmitting or receiving structure, or support thereof, shall be erected, installed, placed, or maintained except in accordance with rules and regulations established by the Board and with the prior written consent of the Architectural Committee in accordance with Article 5.

SECTION 2.05. PARKING RIGHTS. If a Lot is improved with a garage and/or is served by a driveway for which an easement is provided under this Declaration, then each of the following areas shall constitute an assigned parking space for such Lot: the garage, the driveway and the space in the common parking areas, if any, in front of such driveway. Garages shall be used for parking of motor vehicles and shall not be used as storage areas nor converted to other uses, such as conversion to living area. The Board may regulate all parking on the Common Areas including but not limited to the parking of boats, trailers, and other such items on the Common Areas. No boats and other water craft, trailers, campers, tractors, trucks other than pickup trucks rated at 3/4 tons or less, and motor vehicles other than passenger motor vehicles for 8 or fewer passengers shall be parked within the right of way of any street within the Properties, nor shall any of these be regularly parked on the Properties except in an enclosed garage or in areas on the Properties designated by the Board. No inoperable motor vehicles shall be regularly stored on the Properties. The Board may from time to time adopt appropriate rules for the temporary parking of any of these items on the Properties.

SECTION 2.06. RULES AND REGULATIONS. The Board of Directors may establish reasonable rules and regulations concerning the use of the Common Area, including but not limited to the Amenities, and the Lots. Copies of such rules and regulations and amendments thereto shall be furnished by the Association to all Owner's prior to their effective date. Such rules and regulations shall be binding upon the Owner's (with the exception of the Class B Member), their families, tenants, guests, invitees, and agents until and unless such rule or regulation shall be specifically overruled, canceled, or modified by the Board of Directors or by the affirmative votes of a majority of the Members in a regular or special meeting. After notice, opportunity to be heard and notice of the final decision, the Board of Directors shall have the authority to impose reasonable monetary fines and other sanctions for a violation of the Association's rules and regulations, including but not limited to a suspension of the Owner's rights to use the Amenities. All rules and regulations shall be uniform with respect to the Lots. Notwithstanding anything to the contrary in this Declaration, the Board of Directors may not suspend an Owner's right of ingress and egress over the Common Areas and right to the use of parking spaces as provided in this Declaration.

SECTION 2.07. TAXES ON COMMON AREA. The Association shall be responsible for and shall cause to be paid out of annual assessments all ad valorem taxes, special assessments and assessments for public and private capital improvements made to or for the benefit of the Common Area or levied against the Common Area owned in fee simple by the Association.

SECTION 2.08. LEASES OF LOTS. Any lease between an Owner and a tenant for the lease of such Owner's Lot shall provide that the terms of the lease shall be subject in all respects to the provisions of this Declaration, the Organizational Documents and the rules and regulations of the Association, as they exist from time to time, and that any failure by the tenant to comply with the provisions of this Declaration, the Organizational Documents and the rules and regulations of the Association, as they exist from time to time, shall be a default under the terms of the lease. All leases of Lots shall be in writing and shall be for a term of not less than 90 days.

ARTICLE 3-MEMBERSHIP AND VOTING RIGHTS

SECTION 3.01. MEMBERSHIP. Every Owner of a Lot shall be a Member of the Association. The foregoing is not intended to include Persons who hold an interest merely as security for the performance of an obligation. Membership shall be appurtenant to and may not be separated from ownership of a Lot. Ownership of a Lot shall be the sole qualification for membership. The Board of Directors may make reasonable rules relating to the proof of ownership of a Lot. Following termination of the Properties as a planned community under the provisions of the Planned Community Act, all persons entitled to distributions of proceeds under the Planned Community Act shall be Members of the Association.

No Owner, whether one or more Persons, shall have more than one (1) membership for each Lot owned. If only one of the multiple Owners of a Lot is present at a meeting of the Association, the Owner who is present is entitled to cast all the votes allocated to that Lot. If more than one of the multiple Owners of a Lot are present, the votes allocated to that Lot may be cast only in accordance with the agreement of a majority in interest of the multiple owners. Majority agreement is conclusively presumed if any one of the multiple Owners of that Lot casts the votes allocated to that Lot without protest being made promptly to the person presiding over the meeting by any of the other Owners of the Lot.

SECTION 3.02. MEMBERSHIP CLASSES. The Association shall have two classes of voting membership:

Class A: Class A Members shall be all Owners of Lots with the exception of the Class B Member, if any. Class A Members shall be entitled to one (1) vote for each Lot owned. The Class B Member shall be a Class A Member upon the termination of Class B Membership.

Class B: The Class B Member shall be the Declarant and its assigns and each Class B Member shall be entitled to three (3) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership upon the occurrence of any of the following events, whichever occurs first:

(a) When the total votes outstanding in Class A membership equals the total votes outstanding in Class B membership, but provided that the Class B membership shall be reinstated if thereafter and before the time stated in subparagraph (b) below, additional land is annexed to the Planned Community without the assent of Class A Members for the development of such additional land by the Declarant, as provided in this Declaration, but in any event the Class B membership shall terminate when 75% of the Lots have been deeded to Owners other than the Declarant;

(b) On December 31, 2010; or

(c) Upon the surrender of the Class B membership by the Declarant.

ARTICLE 4-COVENANT FOR ASSESSMENTS

SECTION 4.01. CREATION OF THE LIEN AND PERSONAL OBLIGATION OF ASSESSMENTS. The Declarant, for each Lot owned within the Properties, hereby covenants, and each Owner of any Lot by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay the Association:

A. Annual assessments or charges; and

B. Special assessments as provided in this Declaration.

Such assessments are to be established and collected as hereinafter provided. Except as provided in Section 4.04(E) and Section 4.08, all annual assessments shall be fixed at a uniform rate for all Lots; provided, however, as to any Lot which is not a Lot in Use, the amount of the annual assessment for each such Lot shall be an amount equal to twenty-five (25%) of the amount of the annual assessment applicable to a Lot which is a Lot in Use. Except as provided herein, special assessments shall be fixed at a uniform rate for all Lots without regard as to whether or not said Lot is a Lot in Use. Annual assessments shall be collected on a monthly basis. Special assessments may be collected on an annual, semi-annual, quarterly or monthly basis as determined by the Board from time to time. The annual and special assessments, together with such interest thereon, applicable late fees and the cost of collection thereof, including reasonable attorney fees, shall be a charge on the Lot and shall be a continuing lien upon such Lot until paid in full. Each such assessment, together with such interest, late fees and costs of collection, including reasonable attorney fees, shall also be the personal obligation of the Person who was the Owner of such Lot at the time when the assessment fell due. The personal obligation shall not pass to his successors in title unless expressly assumed by them.

SECTION 4.02. PURPOSE OF ASSESSMENTS. The assessments levied by the Association shall be used exclusively to pay the Common Expenses and to promote the recreation, health, safety and welfare of the residents of the Properties, to enforce these covenants and the rules and regulations of the Association, to pay Common Expenses, and in particular for the acquisition, improvement and maintenance of properties, services and facilities devoted to these purposes and related to the use and enjoyment of the Common Areas, including but not limited to, the costs of repairs, replacements and additions, the cost of labor, equipment, materials, management and supervision, the payment of taxes assessed and public assessments levied against the Common Areas owned in fee simple, the cost of maintenance as provided in this Declaration, the cost to purchase and reconstruct Townhomes as provided in this Declaration, the maintenance of water and sewer mains and systems in and upon the Common Areas, the maintenance of streets (whether dedicated or not), drives, entrances, and parking areas within or serving the Properties, the maintenance of Stormwater Control Measures, the procurement and maintenance of insurance in accordance with this Declaration and the Organizational Documents, the payment of charges for garbage collection and municipal water and sewer services furnished to the Common Areas, the employment of attorneys, accountants and other professionals on behalf of the Association when necessary, the provision of adequate reserves for the replacement of capital improvements including, without limiting the generality of the foregoing, paving, roofing, and any other major expense for which the Association is responsible, and such other needs as may arise.

SECTION 4.03. RESERVE FUND. The Association shall establish and maintain an adequate reserve fund for the periodic maintenance, repair and replacement of improvements to the Common Areas and those other portions of the Properties or Lots which the Association may be obligated to maintain. Such reserve fund is to be established and maintained out of regular assessments as a Common Expense, but if the reserve fund is inadequate, a special assessment may be made.

SECTION 4.04. ADOPTION OF BUDGET AND ANNUAL ASSESSMENTS. The following provisions shall not operate so as to restrict the Association or the Board in performing the duties and obligations required of the Association or the Board under the Planned Community Act, but they shall be a limitation on discretionary costs and expenses above and beyond such duties and obligations:

A. Until January 1, 2005, the regular annual assessment shall be $1,380.00 collected at the rate of $115.00 per month for each Lot.

B. The Board of Directors of the Association shall adopt a proposed budget for the Association and set the amount of the regular annual assessment against the Lots for each annual assessment period. Within 30 days after adoption of the proposed budget, the Board of Directors shall provide to all Owners a summary of the proposed budget and a written notice of the meeting to consider the ratification of the proposed budget, which notice shall include a statement that the proposed budget may be ratified without a quorum. The written notice of the meeting of Members to consider ratification of the proposed budget shall be provided at least 10 days and not more than 60 days in advance of such meeting. Unless otherwise provided in the Planned Community Act, there shall be no requirement that a quorum be present at such meeting to consider ratification of the proposed budget. If the proposed budget does not increase the annual assessment by more than 20% above the annual assessment in the last ratified budget, the proposed budget shall be ratified unless at that meeting the Owners of 80% of all Lots reject the proposed budget. If the proposed budget increases the annual assessment by more than 20% above the annual assessment in the last ratified budget, the proposed budget shall be ratified unless at that meeting the Owners of a majority of all Lots reject the proposed budget. In the event the proposed budget is rejected, the last ratified budget of the Association shall continue until a new proposed budget is ratified. The due dates for assessments shall be established by the Board of Directors.

C. Notwithstanding paragraph B above to the contrary, to the fullest extent, if any, permitted by the Planned Community Act, from and after December 31, 2005, the annual assessment effective for any year may not be increased over the annual assessment for the preceding year by a percentage which exceeds the greater of 20% or the percentage increase reflected in the U.S. City Average, Consumer Price Index-United States and selected areas for urban wage earners and clerical workers (published by the U.S. Bureau of Labor Statistics, United States Depart of Labor), or such other index as may succeed such Consumer Price Index, for that twelve month period ending September 30th of such immediately preceding year without the affirmative vote of Members entitled to cast two-thirds (2/3rds) of the votes present in person or by proxy at a meeting duly called for the purpose of ratifying the budget.

D. Within 10 days after receipt of a written request, the Association shall furnish to the Lot Owner or the Lot Owner's authorized agents, a certificate in writing, signed by an officer of the Association setting forth the amount of unpaid assessments and other charges against such Owner's Lot. A reasonable charge may be made by the Board for the issuance of these certificates. Such certificates shall be binding on the Association, the Board and every Lot Owner as provided in the Planned Community Act.

E. Until the Association makes an assessment for Common Expenses, the Declarant shall pay all Common Expenses as required by the Planned Community Act. Until assessments have commenced for every Lot subject to this Declaration as provided in Section 4.08, the Declarant shall pay any shortfall between the Common Expenses and the assessments payable to the Association. Otherwise, if the assessments are insufficient to pay all Common Expenses, the Declarant may advance expenses for the maintenance and operation of the Association to the extent that annual assessments assessed against the Owners are inadequate for this purpose. Such advance shall be to the Association and on terms generally available to Declarant from its lending institution. At such time as the majority of the total votes of the Association are no longer held by the Declarant, its successors or assigns, the Declarant shall have no further obligation for maintenance and operation of the Association pursuant to the terms of this section. Notwithstanding the foregoing, Declarant, its successors and assigns, shall be responsible for the payment of assessments and other amounts pursuant to other sections of this Declaration.

SECTION 4.05. SPECIAL ASSESSMENTS FOR CAPITAL IMPROVEMENTS. In addition to the annual assessments authorized above, the Association may levy in any assessment year a special assessment for the purpose of defraying in whole or in part the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area or any other purpose permitted under the Planned Community Act, including but not limited to budget shortfalls. Any such special assessment shall have the assent of two-thirds (2/3) or more of the total votes of the Members who are voting in person or by proxy at a meeting duly called for this purpose.

SECTION 4.06. SPECIAL ASSESSMENTS FOR THE PURCHASE AND RECONSTRUCTION OF TOWNHOMES. In the event that any Townhome located on any Lot is substantially destroyed by fire or other hazard, the Owner shall give written notice to the Association within ninety (90) days following such destruction of whether such Owner intends to repair or reconstruct the Townhome. If the Owner fails to give such notice to the Association, it shall be presumed, for purposes of this Section, as notice that the Owner intends to repair or reconstruct the Townhome until either such Owner subsequently give notice to the Association that such Owner does not intend to repair or reconstruct the Townhome. For purposes of this Section, "substantially destroyed" shall mean that the costs of replacement or repair equals at least fifty percent (50%) of the appraised value of the Townhome on the Lot before it was damaged. If the Owner elects not to repair or reconstruct the Townhome, the Association shall have the first right and option to purchase such Townhome and the Lot on which it is located in the manner hereinafter provided. The purchase option shall be effective for a period of ninety (90) days following notice of the Owner's election not to repair or reconstruct. For purposes of this Section, the failure of such Owner to repair or reconstruct the Townhome within twelve (12) months following such destruction shall be deemed notice to the Association that the Owner elects not to repair or reconstruct the Townhome.

A. Exercise of Option. Upon notice of an Owner's election not to repair or reconstruct, the Board of Directors shall appoint a committee, or shall designate an existing committee of the Association, to determine whether failure to reconstruct the substantially destroyed Townhome will result in substantial pecuniary injury to the Association or diminution in value of the remaining Lots and Properties. The committee may employee such persons, including, but not limited to, real estate appraisers, real estate agents, architects, and engineers, as are reasonably necessary to make its determination, and shall report its conclusions, with supporting data, in writing to the Board within fifteen (15) days. The report shall set forth such matters as the Board and committee deem pertinent, but shall contain estimates of the pecuniary injury and diminution in value along with an estimate of the cost of purchase and reconstruction of the Townhome.

If the Board of Directors determines that it would be advantageous to the Association and/or to the remaining Properties to purchase and reconstruct the Townhome, it shall call a special meeting by giving written notice thereof, setting forth the purpose of the meeting, to all Members within seven (7) days following submission of the committee report. The special meeting of Members shall be held not less than seven (7) days nor more than fifteen (15) days following notice to Members. Upon an affirmative vote of at least sixty-six and two-thirds percent (66-2/3%) of each class of membership, voting in person, by proxy or by written consent or ballot (unless prohibited by law) the Board will be authorized to purchase and reconstruct the Townhome and the Lot on which it is located and to assess all Lots equally for all costs and expenses arising out of the purchase and repair or reconstruction of such Townhome and Lot. The Board may require that the assessment be paid in a lump sum, in installments during an assessment year, or over a period of two (2) or more assessment years, as the Board, in its discretion, shall determine to be appropriate.

Such an assessment shall be in addition to, and not in lieu of, the annual assessments provided for in this Article and the special assessments provided for in Section 4.04.

B. Determination of Value. The Owner of the substantially destroyed Townhome and Lot on which it is located shall convey marketable fee simple title thereto to the Association upon payment to the Owner by the Association of the fair market value of the Lot and Townhome in its damaged condition. Fair market value shall be determined in any manner agreed upon by the Association and the Owner. If they cannot otherwise agree on a fair market value or method of determining fair market value, each shall appoint an appraiser and those two appraisers shall appoint a third appraiser. The fair market value as determined by any two of these three appraisers shall be final and binding on all parties. In the event no two appraisers agree upon a fair market value, the fair market value shall be the average of the values determined by the appraisers. Each party shall pay the fee of the appraiser selected by it or him, and each party shall pay one-half (½) of the fee of the third appraiser. If the Board and the Owner agree upon a single appraiser, each shall pay one-half (½) of the cost of the appraisal.

C. Application of Insurance Proceeds. The Owner of the substantially destroyed Townhome, prior to conveyance to the Association, shall apply or cause to be applied so much of the proceeds of any hazard insurance paid by reason of the damage or destruction of the Townhome as shall be necessary to pay all liens, mortgages, deeds of trust, taxes and encumbrances upon the Lot so that the marketable fee simple title thereto may be conveyed free and clear of all liens and encumbrances. If the insurance proceeds are not sufficient to pay all liens, encumbrances, and obligations upon the Lot, the purchase price may be reduced by an amount adequate to pay any such deficiency or the deficiency may be paid out of the purchase price.

D. Failure to Exercise Option. If the Association does not exercise the purchase option herein provided for, the Owner may retain the Lot or may transfer or convey it, upon such terms and conditions as he may elect, to any person, to be used solely as a site of an attached, singly-family Townhome. The reconstructed or repaired Townhome shall be substantially identical to the destroyed Townhome, unless a change shall be approved by the Board, and shall be constructed in conformity with plans submitted to and approved by the Board prior to construction.

E. Retention by Owner. If a Townhome is not habitable by reason of damage or destruction, and the Association does not exercise the purchase option provided for herein, the obligation of the Owner to pay annual and special assessments shall not be reduced, delayed, abated or suspended. In the event a Townhome is damaged or destroyed, and the Owner does not begin repair or reconstruction within thirty (30) days following the damage or destruction, the Owner shall remove or cause to be removed, at his expense, all debris from the Lot, so that it shall be placed in a neat, clean, and safe condition and if he fails to do so, the Association may cause the debris to be removed, and the cost of removal shall constitute a lien upon the Lot until paid by the Owner, unless the Lot is thereafter purchased by the Association under this Section.

F. Reconstruction by the Association. Upon the acquisition of title to the Lot and the substantially destroyed Townhome located thereon, the Association is authorized to arrange such financing and to execute such notes, mortgages, deeds of trust, and other instruments, to enter into such contracts, and to do and perform such other matters and things as are necessary to accomplish the reconstruction of such Townhome; provided, however, that only that Townhome which is to be reconstructed and the Lot on which it is located shall stand as security for any liens, mortgages, or obligations arising out of the purchase or reconstruction of such Lot and Townhome, and no other portion of the Properties, including the Common Areas, shall be pledged, hypothecated, mortgaged, deeded in trust, or otherwise given as security for any obligations arising out of said purchase or reconstruction, and no Member shall be required to become personally obligated therefore.

G. Sale or Lease. The Association shall hold title to the Lot and Townhome for the benefit of all Members. The Board may lease or sell the Lot and Townhome upon such terms and conditions as it, in its discretion, deems most advantageous to the Members. The lease rental shall be applied in the following order of priority: (1) to the payment of taxes, assessments, liens, encumbrances, and obligations on or secured by the Lot; (2) to the maintenance, upkeep, and repair of the Lot and Townhome; (3) to payment or repayment to the Members, pro rata, of the special assessment, if any, for purchase and reconstruction of the Lot and Townhome; and (4) to the general expenses of the Association. In the event the Lot is sold, the purchase price shall be applied in the following order of priority: (1) to the payment of taxes, assessments, liens, encumbrances, and obligations on or secured by the Lot; (2) to payment or repayment to the Members, pro rata, of the special assessment, if any, for purchase and reconstruction of the Lot and Townhome; and (3) to the general expenses of the Association. Any payment or repayment to Members of the special assessment may be in cash or may be applied to any annual or special assessments due or to become due.

H. Application of Declaration and Organizational Documents. Any Townhome (including the Lot on which it was constructed) which is destroyed and not subsequently restored or reconstructed and any Townhome which has been destroyed in whole or in part, by fire or other casualty, and is subsequently restored or reconstructed, at all times shall be subject to the provisions of this Declaration and to the Organizational Documents of the Association.

SECTION 4.07. NOTICE AND QUORUM FOR ANY ACTION AUTHORIZED UNDER SECTIONS 4.05 AND 4.06. Written notice of any meeting called for the purpose of taking any action authorized under Sections 4.05 or 4.06 shall be sent to all Members not less than 10 days nor more than 60 days in advance of the meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast sixty percent (60%) of all the votes in the Association shall constitute a quorum. If the required quorum is not present, the meeting may be adjourned by a majority vote of those present in person or by proxy and the required quorum at the next meeting shall be reduced by one-half of the required quorum for the previously adjourned meeting as provided in the Planned Community Act. No such subsequent meeting shall be held more than 60 days following the preceding meeting.

SECTION 4.08. DATE OF COMMENCEMENT OF ANNUAL ASSESSMENTS. The annual assessments provided for herein shall commence as to a Lot on the earlier of the date such Lot was conveyed by the Declarant to a third party purchaser or the date such Lot becomes a Lot In Use. The first annual assessment for such Lot shall be adjusted according to the number of months remaining in the calendar year.

SECTION 4.09. EFFECT OF NON-PAYMENT OF ASSESSMENTS/REMEDIES OF THE ASSOCIATION. Any assessment which is not paid within thirty (30) days after the due date shall be delinquent. The Association shall have the option to declare the outstanding balance of any assessment due and payable if any installment thereof shall become delinquent as defined herein. If an assessment is not paid within thirty (30) days after its due date, the assessment shall bear interest from its due date at the rate of twelve percent (12%) per annum, or such other rate as established by the Association as provided in the Planned Community Act, but in no event shall such interest exceed the highest rate allowed by applicable Law, and shall be subject to late fees as approved by the Board of Directors and permitted by applicable Law. An assessment levied against a Lot remaining unpaid for a period of 30 days or longer shall constitute a lien on that Lot when a claim of lien is filed of record in the Office of the Clerk of Superior Court of Wake County, North Carolina. The Association may bring an action at law against the Owner personally obligated to pay the same and/or foreclose the lien against such Owner's Lot provided under this Declaration. To the extent permitted or required by the Planned Community Act, interest, late fees, costs and reasonable attorney fees of any such action shall be added to the amount of such assessment. Each such Owner, by acceptance of a deed to a Lot hereby expressly grants to the Association, its agents or assigns, the right and power to bring all actions against such Owner personally liable for the collection of such charges as a debt and to enforce the aforesaid lien by all methods available for the enforcement of such liens, including foreclosure by an action brought in the name of the Association in a like manner as a Mortgage or a deed of trust lien on real property under power of sale under Article 2A of Chapter 45 of the North Carolina General Statutes and such Owner hereby expressly grants to the Association a power of sale in connection with foreclosure of said lien. Such lien shall be in favor of the Association, which shall have the power to purchase the Lot subject to the lien at foreclosure and to acquire and hold, lease, mortgage and convey the same. No Owner may waive or otherwise escape liability for assessments provided for herein by non-use of the Common Area, including without limitation the Amenities, or by abandonment of his Lot.

SECTION 4.10. SUBORDINATION OF THE LIEN TO MORTGAGE. The lien of the assessments provided for herein shall be subordinate to the lien of any first Mortgage on a Lot. Mortgagees are not required to collect assessments and nothing in this Declaration shall require that failure to pay assessments shall constitute a default under a Mortgage. Sale or transfer of any Lot shall not affect the assessment lien; however, the sale or transfer of any Lot pursuant to the foreclosure of any such Mortgage or any proceeding in lieu thereof shall extinguish the lien of such assessment as to payments which become due prior to such sale or transfer; provided that the Association and Declarant have been notified of said foreclosure prior to the date thereof. Such unpaid assessments extinguished by the foreclosure sale shall be deemed to be a Common Expense collected from all Owners, including the purchaser at foreclosure, his successors and assigns. No sale or transfer shall relieve any such Lot from liability for any assessment thereafter becoming due or from the lien thereof.

SECTION 4.11. EXEMPT PROPERTY. The following portions of the Properties, subject to this Declaration, shall be exempt from the assessment created herein:

A. All portions of the Properties dedicated to and accepted by a local public authority; and

B. The Common Area.

SECTION 4.12. INSURANCE COVERAGE. The Board of Directors or its duly authorized agent may have the authority to and shall obtain insurance for the Common Area, including but not limited to the Amenities and Stormwater Control Measures, against loss or damage by fire or other hazards in an amount sufficient to cover the full replacement cost of any repair or reconstruction work in the event of damage or destruction from any hazard and shall also obtain a broad-form public liability policy covering the Common Area and all damage or injury caused by the negligence of the Association or any of its agents in such amounts as determined by Board of Directors. Said insurance may include coverage against vandalism. Premiums for all such insurance shall be a Common Expense. All such insurance coverage shall be written in the name of the Association.

In the event that the need for maintenance or repair is caused through the willful or negligent act of the Owner, his family, guests, tenants, invitees, contractors, employees or authorized representatives, the cost of such maintenance or repair shall be added to and become part of the assessment applicable to the Lot owned by such Owner.

SECTION 4.13. WORKING CAPITAL FUND. In addition to any other assessment provided in this Declaration, at the earlier of the closing of the first sale of each Lot after such Lot becomes a Lot in Use, or upon the occupancy of such Lot as a dwelling unit, a sum equal to two (2) months of the regular annual assessment applicable to such Lot shall be collected from the purchaser in the event of such sale or from the Owner in the event of such occupancy, and such sum shall be paid to the general operating fund of the Association to be used in the same manner specified for annual assessments. All sums paid into the working capital fund are in addition to and not in lieu of any regular or special assessments for Common Expenses.

SECTION 4.14. ASSOCIATION FUNDS NOT ASSET OF OWNERS. All monies collected by the Association shall be treated as the separate property of the Association, and such monies may be applied by the Association to the payment of any Common Expense or to the proper undertaking of all acts and duties imposed upon it by virtue of this Declaration and the Organizational Documents of the Association. As monies for any assessment are paid to the Association by any Owner, the same may be commingled with monies paid to the Association by the other Owners. Although all funds and common surplus, including other assets of the Association and any increments thereto or profits derived therefrom, shall be held for the benefit of the Members, no Member shall have the right to assign, hypothecate, pledge or in any manner transfer his membership interest therein, except as an appurtenance to his Lot. When an Owner shall cease to be a Member by reason of his divestment of ownership of his Lot, by whatever means, the Association shall not be required to account to such Owner for any share of the fund or assets of the Association, or for any assessment which may have been paid to the Association by such Owner, as all monies which any Owner has paid to the Association are an asset of the Association which may be used in the operation and management of the Properties.

## ARTICLE 5-ARCHITECTURAL CONTROL AND BUILDING RESTRICTIONS

SECTION 5.01. PURPOSES. The Properties are hereby made subject to the protective covenants and restrictions hereby declared for the purpose of insuring the best use and most appropriate development and improvement of each Lot in the Properties; to protect the Owners against such improper use of surrounding Lots as will depreciate the value of the Properties; to preserve, so far as practicable, the natural beauty of said Properties; to guard against the erection thereof of poorly designed or proportioned structures, and structures built of improper and unsuitable materials; to obtain harmonious color schemes; to insure the highest and best development of said Properties; to encourage and secure the erection of attractive dwelling units thereon, with appropriate locations thereof on Lots; to secure and maintain proper set-backs from the streets and adequate free spaces between structures; and in general to provide adequately for a high type and quality of improvements in said Properties and thereby to enhance the values of investments made by the purchasers of Lots therein. It is specifically disclosed that different architectural styles, sizes and prices of Townhomes may be built by the Declarant to provide a variety of housing options.

SECTION 5.02. PLAN APPROVAL REQUIREMENT. For purposes of this Declaration, the term "Improvement" shall mean any hedge, mass landscape planting, building, wall, fence or other structure. Other than Improvements constructed, installed, planted or otherwise made by the Declarant, no Improvement shall be commenced, altered, erected, maintained or permitted to remain upon any Lot, nor shall any addition, alteration, replacement, repair to the exterior or other change in exterior appearance of a Townhome or Lot be made thereto, nor shall any Improvement be rebuilt after destruction by any hazard until plans and specifications, showing the nature, kind, space, height, color, materials, and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Architectural Committee.

The number of bedrooms in a Townhome shall not be increased either by construction of an addition or the conversion of other areas and no garage may be converted from parking of vehicles to a bedroom or other living area without the approval of the Declarant during the period of Class B Membership, and thereafter, of the Board of Directors. The approval required under this Section for increasing the number of bedrooms in a Townhome or the conversion of any garage is in addition to any approval which may be required by the City or other governmental body having jurisdiction.

In the event the Architectural Committee, fails to approve or disapprove any Improvement within thirty (30) days after all completed plans and specifications and other information reasonably requested have been properly submitted, approval will not be required and this Article will be deemed to have been fully complied with. To the extent not prohibited by the Planned Community Act, the Association shall have the right to charge and collect a reasonable fee for review of such plans and specifications. Nothing herein contained shall be construed to require approval for any Improvement constructed, made, installed or planted by the Declarant nor to permit interference with the development of the Properties by the Declarant so long as said development follows the general plan of development of the Properties approved by the City from time to time.

SECTION 5.03. ARCHITECTURAL COMMITTEE. During the period of Class B Membership, the Declarant shall be the Architectural Committee. Upon the expiration or termination of the Class B Membership or upon the earlier relinquishment of the right to act as the Architectural Committee by the Declarant, the Board of Directors may designate the number of and appoint the members of the Architectural Committee on an annual basis. In the event of the death or resignation of any member of the Architectural Committee, the Board of Directors shall designate and appoint a successor. Members of the Architectural Committee may be removed and replaced at any time, with or without cause, and without prior notice, by the Board of Directors. At all times that the Board of Directors fails to appoint members of the Architectural Committee pursuant to this Section, the Board of Directors shall be the Architectural Committee.

SECTION 5.04. PROCEDURES. No Improvement shall be commenced, altered, erected, maintained or permitted to remain on any Lot, except by the Declarant, until all plans and specifications therefor and a site plan therefor have been submitted to and approved in writing by the Architectural Committee as to:

A. quality of workmanship and materials, adequacy of site dimensions, adequacy of structural design, and facing of main elevation with respect to nearby streets;

B. conformity and harmony of the external design, color, type and appearance of exterior surfaces;

C. location with respect to topography and finished grade elevation and effect of location and use on neighboring Lots and any Improvements situated thereon and drainage arrangement; and

D. the other standards set forth within this Declaration (and any amendments hereto) or as may be set forth within standards promulgated by the Board of Directors from time to time.

Final plans and specifications (including a site plan showing the location of the contemplated Improvements on the Lot) for all Improvements proposed to be constructed on a Lot shall be submitted to the Architectural Committee for approval or disapproval. The Architectural Committee is authorized to request the submission of samples of proposed construction materials. Any modification or change to the plans and specifications (specifically including, but without limitation, the above described site plan) approved by the Architectural Committee must again be submitted to the Architectural Committee for its inspection and approval. The Architectural Committee's approval or disapproval as required herein shall be in writing. Once the Architectural Committee has approved the plans and specifications for the proposed Improvements, the construction of such Improvements must be promptly commenced and diligently pursued to completion and if such construction is not commenced within the time set therefor by the Architectural Committee in the written approval (but in no event later than twelve (12) months after such approval), such approval shall be deemed rescinded and before construction of Improvements can thereafter be commenced on the Lot in question, the plans and specifications therefor must again be approved by the Architectural Committee pursuant to this Article.

The Board of Directors may from time to time publish and promulgate architectural standards which shall be fair, reasonable and uniformly applied in regard to the Lots and shall carry forward the spirit and intention of these covenants, conditions and restrictions. Such standards shall supplement this Declaration. Current copies of the architectural standards shall be available to interested persons at the principal office of the Association for a reasonable cost.

It is the responsibility of the Owner of a Lot to consult with a licensed and qualified architect and/or engineer to prepare or review the plans and specifications for compliance with applicable laws and building codes and to cause the construction, erection and/or installation of Improvements on a Lot to be performed by a licensed and qualified contractor.

SECTION 5.05. CONDITIONS. As a condition to the granting of approval of any request made under this Article, the Architectural Committee may require that the Owner requesting such change be liable for any cost of maintaining or repairing the approved project. If such condition is imposed, the Owner shall evidence his consent thereto by a written document in recordable form satisfactory to the Architectural Committee. Thereafter, the Owner, and any subsequent Owner of the Lot, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree that any cost of maintenance and repair of such Improvement shall be added to and become a part of the annual assessment or charge applicable to such Lot, and subject to the lien rights provided in this Declaration.

SECTION 5.06. GROUNDS FOR DISAPPROVAL/DEFECTS. Refusal of approval of such plans, locations or specifications may be based upon any grounds, including purely aesthetic and environmental, which the Architectural Committee, in its sole discretion, shall deem sufficient.

SECTION 5.07. VERIFICATION OF COMPLIANCE WITH PLANS. The Architectural Committee, or its appointed agents, shall have the right, at its election, but shall not be required, to enter upon any Lot during site preparation or construction, erection or installation of Improvements, to inspect the work being undertaken and to determine that such work is being performed in conformity with the approved plans and specifications and in a good and workmanlike manner, utilizing approved methods and good quality materials.

SECTION 5.08. ENFORCEMENT. The Architectural Committee shall have the specific, nonexclusive right, but shall not be required, to enforce the provisions contained in this Article and to prevent any violation of the provisions contained in this Article by a proceeding at law or in equity against the person or persons violating or attempting to violate any such provisions contained herein.

SECTION 5.09. LIMITATION OF LIABILITY. Neither the Architectural Committee nor any of the members thereof shall be liable in damages or otherwise to anyone submitting plans and specifications and other submittals for approval or to any Owner by reason of mistake of judgment, negligence or nonfeasance arising out of services performed pursuant to this Declaration. **NEITHER THE APPROVAL OF PLANS AND SPECIFICATIONS NOR ANY INSPECTION OF IMPROVEMENTS BY THE ARCHITECTURAL COMMITTEE OR ANY OF ITS MEMBERS IS A CERTIFICATION THAT THE PLANS AND SPECIFICATIONS AND/OR THE IMPROVEMENTS CONSTRUCTED IN ACCORDANCE THEREWITH COMPLY WITH APPLICABLE LAWS AND BUILDING CODES. NEITHER THE ARCHITECTURAL COMMITTEE NOR ANY OF THE MEMBERS THEREOF SHALL BE LIABLE OR RESPONSIBLE FOR ANY DEFICIENCIES OR DEFECTS IN THE PLANS AND SPECIFICATIONS SUBMITTED TO IT OR IN ANY STRUCTURE ERECTED ACCORDING TO SUCH PLANS AND SPECIFICATIONS.**

SECTION 5.10. COMPENSATION. No member of the Architectural Committee shall be entitled to compensation arising out of services performed pursuant to this Article. With prior approval of the Board of Directors, the Association shall reimburse members of the Architectural Committee for reasonable out-of-pocket expenses incurred by such members in the performance of their duties as members of the Architectural Committee.

ARTICLE 6-PARTY WALLS

SECTION 6.01. GENERAL RULES OF LAW TO APPLY. Each wall which is built as a part of the original construction of the Townhomes upon the Properties and placed on the dividing line between Lots shall constitute a party wall, and, to the extent not inconsistent with the provision of this Article, the general rules of law regarding party walls and liability for property damage due to negligence, or willful acts or omissions shall apply thereto. Each party wall shall be constructed, reconstructed and replaced in accordance with the North Carolina State Building Code.

SECTION 6.02. SHARING OF REPAIR AND MAINTENANCE. The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in proportion to such use.

SECTION 6.03. DESTRUCTION BY FIRE AND OTHER CASUALTY. If a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it, and if the other Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

SECTION 6.04. WEATHERPROOFING. Notwithstanding any other provision of this Article, an Owner who by his negligent or willful act or omission causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements and repairing all damage resulting from such exposure.

SECTION 6.05. RIGHT TO CONTRIBUTION RUNS WITH LAND. Any Owner performing any work on a party wall which is required or permitted under this Declaration shall have a right of contribution against the other Owners for such other Owners' shares of the costs associated with such work as provided in this Declaration, which right of contribution shall be a lien upon the Lot of each such other Owner to secure the payment of the right of contribution. Except as otherwise provided in this Declaration, such right of contribution is due and payable by the later of (i) thirty (30) days after written request for payment, or (ii) ten (10) days after use of such party wall begins on such Owner's Lot (as evidenced by a building permit for the repair, reconstruction or replacement of the Townhome on the Owner's Lot). In the case of work necessitated by the act, negligence or omission of an Owner or its occupants, employees, contractors or other authorized representatives, such right of contribution is due and payable immediately without formal demand. Upon request, an Owner seeking payment of a right of contribution shall furnish the requesting Owner copies of invoices and other reasonable information concerning such costs. In the event legal action is needed to enforce payment of a right of contribution, the successful Owner seeking such payment or contribution also may recover its reasonable attorneys' fees and interest at the lesser of the highest legal rate or the rate of twelve percent (12%) per annum, compounded monthly, from the date payment is due. The right of any Owner to contribute to the costs or maintaining, repairing, replacing or reconstructing a party wall under this Article shall be appurtenant to the land and shall pass to Owner's successors in title.

SECTION 6.06. ESTOPPEL CERTIFICATES. Within seven (7) days after receipt of a written request to an Owner, such Owner shall furnish a written, signed statement setting forth any right of contribution or any claim for costs or obligations under this Article and the amount thereof. Any third party acquiring any right, title or interest in a Lot may rely upon such statement and shall be bound only for the amounts stated therein. If no statement is provided, the third party may conclude that there is no right of contribution or claim for costs or obligations under this Article. Provided, the failure to provide such statement shall not otherwise affect the rights of the any Owner against anyone other than such third party for any right of contribution or claim for costs or obligations under this Article.

SECTION 6.07. EASEMENT AND RIGHT OF ENTRY FOR REPAIR, MAINTENANCE AND RECONSTRUCTION. Every Owner shall have an easement and right of entry upon the Lot of any other Owner to the extent reasonably necessary to perform repair, maintenance, or reconstruction of a party wall and of those Improvements belonging to one Lot which encroach on an adjoining Lot or Common Areas. Such repair, maintenance, or reconstruction shall be done expeditiously, and upon completion of the work, the Owner shall restore the adjoining Lot or Lots and Common Area to as near the same condition as that which prevailed prior to commencement of the work as is reasonably practicable.

SECTION 6.08. ARBITRATION. In the event of any dispute arising concerning a party wall, or under the provisions of this Article, any affected Owner may demand that such dispute shall be settled by arbitration as provided under the laws of the State of North Carolina as they now are or are hereafter amended.

ARTICLE 7-EXTERIOR MAINTENANCE

SECTION 7.01. MAINTENANCE BY ASSOCIATION. Except as specifically provided in this Declaration, the Association shall maintain and repair all portions of the Common Area, including but not limited to grass, plants, shrubs, trees, landscaping, sidewalks, private streets, the Stormwater Control Measures, Amenities and other facilities, if any. In addition to the operation and maintenance of the Common Areas, the Association shall provide exterior maintenance upon each Townhome on a Lot which is subject to assessment hereunder, only as follows: Stain and/or paint the exterior surfaces of Townhomes; replace roofs; and normal and routine repair, replacement and care for gutters, down spouts, walks, water and sewer lines lying outside the foundations of Townhomes. Such exterior maintenance shall not include any glass panes, screens, driveways serving a single Lot, failure of glass surfaces, nor maintenance and repair required to be performed by any Owner. The Owner shall promptly notify the Association of the need for exterior maintenance. In addition, the Association shall be responsible for maintaining the grass, plants, shrubs, trees, landscaping, walks and parking areas (hereinafter the "Yard Improvements") installed by the Declarant, the Association or the builder who constructed the initial Improvements on a Lot, and any Yard Improvements installed by an Owner with the prior written consent of the Association (but only to the extent that such consent specifically provides that the Association will maintain such added landscaping); provided, however, that: (i) the Association shall not be responsible for maintaining any fence installed on any Lot or any Yard Improvements inside of such fence; (ii) the Association's obligation to maintain shall not include the obligation to replace any plant, shrub or tree on a Lot for any reason; (iii) the Association may, but is not required to, water or fertilize Yard Improvements; (iv) the Association shall not be responsible for repair or replacement of any Yard Improvements when such repair or replacement is necessitated by work done by or at the request of any Owner. No Owner or occupant shall install any fence or similar structure on his Lot or plant any vegetation on his Lot except with the prior written approval of the Architectural Committee under Article 5. The Association shall have no responsibility or obligation to maintain any Lot or Townhome except as specifically provided in this Declaration.

SECTION 7.02. OWNER'S MAINTENANCE OBLIGATIONS. In addition to each Owner's responsibility and obligation to maintain such Owner's Lot and Townhome under Section 8.10, each Owner shall maintain those portions of such Owner's Lot and the Townhome thereon as are not specifically to be maintained by the Association under Section 7.01 above, including but not limited to: the, deck, porch, siding, brick, shutters, exterior trim, glass panes, screens, garage doors, doors and windows. The Owner of a Lot improved with a garage and/or served by a driveway shall repair and maintain the garage door and driveway in good order, condition and appearance and shall repair and correct any unsafe or unsightly condition thereon. Each Owner shall be responsible for all repair and maintenance of his Lot except such maintenance and repair specifically required to be provided by the Association under this Declaration or the Organizational Documents. Any Owner who fences, encloses or screens, by plants or structures, any portion of his Lot (which fence, enclosure or screen shall require prior written approval under Article 5), may plant trees, shrubs, flowers and grass in the fenced or enclosed portion at his own expense, provided that such enclosure, planting and maintenance does not hinder the Association in performing its maintenance duties under this Declaration. No such maintenance by an Owner shall reduce any assessment payable by such Owner to the Association. If, in the opinion of the Association, any such Owner fails to maintain his rear yard in a neat and orderly manner, the Association may revoke the Owner's maintenance rights for a period not to exceed one (1) year. The Association may perform maintenance during the revocation period and any other repair or maintenance not performed by an Owner as required in this Declaration. Any additional maintenance costs incurred by the Association as a result of an Owner's failure to maintain or repair as provided in this Declaration shall be added to and become a part of the assessment to which such Owner's Lot is subject.

SECTION 7.03. NEGLIGENCE, ETC.. In the event that the need for maintenance or repair of any Lot or Common Area is caused through the willful or negligent acts or omissions of an Owner, or such Owner's family, tenants, contract purchasers, guests, invitees, contractors, employees, or authorized representatives, such Owner shall be responsible for the cost of such maintenance and repair, which shall be added to and become a part of the assessment applicable to the Lot owned by such Owner. The Association shall have the right, but not the obligation, to enter onto an Owner's Lot and to perform any maintenance or repair required to be performed by an Owner under this Declaration in the event that an Owner fails to commence any such maintenance or repair within 30 days after written notice from the Association to such Owner specifying the need for such maintenance and repair or such Owner, after commencing such maintenance and repair, fails to diligently pursue to completion such maintenance and repair within a reasonable period of time not exceeding an additional 45 days; provided, however, no notice nor waiting period shall be required with respect to an emergency condition existing on an Owner's Lot.

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## ARTICLE 8-USE RESTRICTIONS

SECTION 8.01. PERMITTED USE. No Lot shall be used for any purpose other than a single family residential dwelling; provided, however, the Declarant excepts and reserves the right for itself and its assigns to use any Lot or Townhome as sales offices and/or models which may be shown to prospective purchasers of Lots. No garage shall be converted or used as a bedroom, storage room or other living space, nor shall the number of bedrooms in a Townhome be increased without the approval of the Association and the City. Garages shall be used for the parking of motor vehicles and limited storage which does not interfere with such parking.

SECTION 8.02. NO BUSINESSES. Except as specifically provided in this Section, no trade, business, industry, occupation or profession of any kind, whether commercial or otherwise, shall be conducted, maintained, or permitted on any Lot or other part of the Properties, except that any Owner may lease his Lot for residential purposes in accordance with this Declaration; provided, however, the foregoing covenant shall not apply to the business activities associated with the development of the Properties and sales of the Lots and the construction and maintenance of Townhomes and other Improvements on the Lots, and to the various activities of the Association in furtherance of its powers and purposes. The Declarant and its agents and builders may use any Lot or Lots and any house thereon for office, sales or display purposes.

An Owner or occupant residing in a Townhome may conduct business activities within such Townhome so long as: (a) the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from outside the Lot; (b) the business activity conforms to all applicable zoning requirements, without the need for a variance; (c) the business activity does not involve door-to-door solicitation of residents of the Properties; (d) the business activity does not, in the reasonable judgment of the Board of Director, generate a level of vehicular or pedestrian traffic or a number of vehicles being parked in the Properties which is noticeably greater than that which is typical of Lots in which no business activity is being conducted; (e) the business activity is consistent with the residential character of the Properties, does not create a hazardous or dangerous condition nor threaten the security or safety of other occupants of the Properties, and is not a nuisance nor an unreasonable annoyance or offensive use, all as may be determined in the sole discretion of the Association's Board of Directors.

The terms "business", "trade", "industry", "occupation" and "profession" as used in this Section, shall be construed to have their ordinary, generally-accepted meanings and shall include, without limitation, any occupation, work or activity which involves the provision of goods or services to person other than the provider's immediate family and for which the provider receives a fee, compensation or other form of consideration, regardless of whether such activity is engaged in full or part-time, such activity is intended to or does generate a profit, or whether a license is required. The leasing of a Lot in accordance with this Declaration shall not be considered a business or trade within the meaning of this Section.

SECTION 8.03. PROHIBITED STRUCTURES. No Owner shall at any time place on such Owner's Lot or any other portion of the Properties, any mobile, manufactured or modular home, nor shall any tent, shack, camper or other temporary structure of a similar nature be used as a residence either temporarily or permanently upon any Lot with the limited exception of construction trailers for use as offices for overseeing construction and sales during the construction process and then only for the use of the contractor performing such construction and sales. Such construction trailers shall not be permitted to remain on the Properties after the period of construction and sales.

SECTION 8.04. ANIMALS. No animal, livestock or poultry of any kind shall be raised or kept on any Lot, except that no more than a total of 2 dogs, cats or other usual household pets, or combination thereof, may be kept and maintained thereon, provided that such a total of pets shall not be a danger or menace to others, that they are not kept or maintained for any commercial purposes or in such a manner to be dangerous, threatening, or unreasonably offensive to the residents of the Properties and provided further that they are kept, maintained and controlled in compliance with: (i) all applicable Laws, (ii) such rules and regulations as the Board of Directors may adopt from time to time, and (iii) the keeping of such animals does not increase the premiums for any insurance maintained by the Association or which will result in the cancellation of any such insurance. In the event of a dispute over whether an animal is a permitted household pet for purposes hereunder, the determination of the Declarant during the period of Class B Membership and thereafter by the Board of Directors shall be final. Puppies and kittens in excess of the numbers set forth above may be kept only until old enough to be safely separated from their mother. The Board of Directors shall have the absolute power to prohibit any particular pet from being kept on the Properties, including inside a residence, if the Board of Directors in its sole and absolute discretion determines that the pet is threatening, menacing, dangerous, a nuisance, or otherwise has a negative impact on the Properties. Additionally, no kennel or dog run or similar structure shall be constructed or allowed to remain on any Lot.

SECTION 8.05. OUTSIDE ANTENNAS. No outside radio or television antennas or discs shall be erected on any Lot or Townhome within the Properties unless and until permission for the same has been granted by the Architectural Committee in accordance with Article 5. To the extent this restriction may later be determined to be unenforceable pursuant to applicable Laws, including but not limited to any rules and regulations promulgated by the Federal Communication Commission (as from time to time may be amended), an Owner shall nevertheless be restricted in its placement of said antennas to an area which is least visible from the front of the Townhome and which causes or is likely to cause the least interference with the placement and use of antennae and disks by other Owners. Any permitted antenna or disk shall be installed, maintained and replaced in accordance with rules and regulations adopted by the Board from time to time. Nothing in this Section shall prohibit the Declarant or the Association from installing, nor obligate either of them to install, a central master antenna, satellite dish or other similar master telecommunication system for the benefit of the Lots and charging fees for usage thereof.

SECTION 8.06. INSURANCE RISKS. Nothing shall be kept and no activity shall be conducted in any Townhome, Lot or on the Common Areas, nor shall any Owner do or keep anything, nor cause or allow anything to be done or kept on his Lot, or in his Townhome or on the Common Areas, which will increase the rate of insurance, applicable to residential use, for the Properties or the contents thereof or which will result in the cancellation of insurance on any portion of the Properties, or the contents thereof, or which will be in violation of any applicable Law. No waste shall be committed on any portion of the Common Areas.

SECTION 8.07. SIGNS. No Owner shall display, or cause or allow to be displayed, to public view on his Lot any sign, placard, poster, billboard, or identifying name or number on any portion of a Lot, the Common Area or the right-of-way of any street or road within the Properties except as permitted in this Declaration or as required by applicable Law. Notwithstanding the foregoing, the Declarant and each Owner, or their respective agents, may place a single "For Sale" or "For Rent" sign on any Lot they own. During the development of the Properties and the marketing of Lots, the Declarant, builders and their real estate agents may maintain offices and may erect and display such signs as the Declarant deems appropriate as aids to such development and marketing, provided that such signs do not violate any applicable Laws. No Owner, other than the Declarant, shall display, or cause or allow to be displayed, to public view on his Lot any "For Sale" or "For Rent" sign which exceeds 24 inches in width and 24 inches in height. The Board of Directors may adopt Rules and Regulations concerning the color and placement of signs by Owners other than the Declarant. A approved sign not exceeding 24 inches in width and 24 inches in height advertising a yard sale or other temporary activity may be displayed on a Lot for no more than 48 consecutive hours. Notwithstanding the foregoing, the Board of Directors has the authority to require any sign, other than a sign maintained by the Declarant, be removed if it determines, in its sole discretion, such sign to be detrimental to the Properties. Easements are reserved as shown and designated on the recorded plats of the Properties to erect and construct entrance signs and landscape or street scape areas.

SECTION 8.08. STRUCTURAL INTEGRITY. Nothing shall be done in or to any Townhome or in, to, or upon any of the Common Areas which will impair the structural integrity of any building, Townhome, or portion of the Common Areas or which would impair or alter the exterior of any building or portion thereof, except in the manner provided in this Declaration.

SECTION 8.09. NUMBER OF OCCUPANTS. No Lot shall be rented to or occupied by a greater number of unrelated individuals than the number of bedrooms in the Townhome on such Lot as approved in accordance with Article 5 of this Declaration. No Lot shall be rented to or occupied by a number of individuals, whether or not unrelated, which exceeds twice the number of bedrooms in the Townhome on such Lot as approved in accordance with Article 5 of this Declaration; provided, however, a Lot may be rented to or occupied by a number of individuals which is not more than three (3) times the number of bedrooms in the Townhome on such Lot as approved in accordance with Article 5 of this Declaration so long as all such individuals occupying such Townhome are within the same immediate natural or adopted family (namely, spouses, grandparents, parents, children and grandchildren) or who are legal guardian and ward. For purposes of this Section, "unrelated individuals" means individuals who are neither within the same immediate natural or adopted family (namely, spouses, grandparents, parents, children and grandchildren) nor who are legal guardian and ward; provided, however, siblings shall be considered unrelated individuals unless one of their parents or legal guardian also occupies the same Lot as such parent's or legal guardian's principal residence.

SECTION 8.10. MAINTENANCE OF LOTS. Each Owner shall keep his Lot in an orderly condition and shall keep the Improvements thereon in a suitable state of repair, promptly repairing any damage thereto by fire or other causality. No clothesline may be erected or maintained on any Lot. Except to the extent of any maintenance by the Association, each Owner shall maintain and replace the Yard Improvements on his Lot in a clean and neat condition and shall keep his landscaping trimmed so as not to be unsightly. No Lot shall be used in whole or in part for storage of rubbish of any character whatsoever nor for the storage of any property or thing which will cause any noise that will disturb the peace and quiet of the occupants of surrounding Lots, and no trash, rubbish, stored materials, wrecked or inoperable vehicles, vehicles unlicenced for more than thirty (30) days, or similar unsightly items shall be allowed to remain on any Lot outside an enclosed structure; provided, however, that the foregoing shall not be construed to prohibit temporary deposits of trash, rubbish, or other debris for collection by governmental or other similar garage and trash removal units. In the event that any Owner fails or refuses to comply with any of the foregoing, the Declarant or Association may demand that the Owner promptly comply with the same by mailing a notice thereof to the Owner at his address, specified in his contract to purchase such Lot or by posting such notice on the Lot. If the Owner has not complied therewith within five (5) days thereafter, the Declarant or Association may enter and correct the same at Owner's expense. Each Owner, by acquiring a Lot subject to these restrictions, agrees to pay such cost promptly upon demand by Declarant or the Association. No such entry as provided herein shall be deemed a trespass.

SECTION 8.11. GARBAGE CANS AND TRASH REMOVAL. Garbage cans or approved dumpsters shall be located or screened so as to be concealed from view of neighboring Lots, Common Areas and street rights of way. All rubbish, trash, and garbage shall be regularly removed from any Lot and shall not be allowed to accumulate thereon. Trash spillage shall be the responsibility of the subject Owner for removal. Yard waste must be disposed of properly and not deposited on any other Lot, the Common Areas or street rights of way within the Properties. Notwithstanding the foregoing, The Declarant reserves for itself and its approved builders of Townhomes within the Properties the right to dump and bury rocks, trees, stumps and similar debris as needed for efficient development of the Properties provided that such dumping and burying are done according to good building practice and in accordance with all applicable Laws.

SECTION 8.12. NUISANCES. No immoral, improper, offensive or unlawful use shall be made of the Properties, or any part thereof, and all applicable Laws shall be observed. No noxious or unreasonably offensive activities shall be carried on upon any Lot or other portion of the Properties, nor shall anything be done thereon which may be or become a nuisance or an unreasonable annoyance to the neighborhood. Activities associated with the development of the Properties and the construction of Townhomes on the Properties shall not be deemed offensive nor an annoyance or nuisance if conducted in accordance with the ordinances of the City. Other than in connection with the development of the Properties or the construction and sale of Lots and Townhomes, no trade materials or inventories may be stored upon a Lot.

SECTION 8.13. RULES AND REGULATIONS. The Board of Directors shall have the power to formulate, adopt, amend, publish, and enforce reasonable rules and regulations concerning the use and enjoyment of each Lot and the Common Area. All rules and regulations, along with all policy resolutions and policy actions taken by the Board of Directors, shall be recorded in a Book of Resolutions which shall be maintained in a place convenient to the Owners and available to them for reasonable inspection during normal business hours.

SECTION 8.14. SUBDIVISION OF LOT. No Lot shall be subdivided except with the prior written approval of the Declarant or its assigns, if during the period of Class B membership, and thereafter with the prior written approval of the Board; provided, however, the Declarant reserves the right to subdivide, re-subdivide or recombine any Lot or other property in the Properties owned by the Declarant. Any subdivision, re-subdivision or recombination of the Properties or any portion thereof shall be done in accordance with all applicable laws and regulations.

SECTION 8.15. OPEN SPACE PRESERVATION AND PROTECTION AREAS. Within any portion of the Common Area which is designated or approved as permanently protected undisturbed open space areas, no land-disturbing activity, placement of impervious surfaces, removal of vegetation, encroachment, construction nor erection of any structure shall occur except in accordance with a proper permit first being issued by the City.

SECTION 8.16. MISCELLANEOUS SETBACK. No fence, wall, storage shed or similar type of structure or any other kind of obstruction shall be permitted within the area lying within five (5) feet of the adjoining Townhome that will obstruct such access to the adjoining Townhome.

SECTION 8.17. DEVELOPMENT RIGHTS RESERVED. Declarant reserves and shall have the right to exercise, without any consent, approval or authorization of any other Owner or the Board of Directors, all special declarant rights as provided in this Declaration and/or as permitted in the Planned Community Act, including but not limited to, any right (i) to complete Improvements indicated on plats and plans filed with this Declaration; (ii) to exercise any development right; (iii) to maintain sales offices, management offices, signs advertising the Properties, and models; (iv) to use easements through the Common Areas for the purpose of making Improvements within the Properties; (v) to make the Properties subject to a master association; and (vi) to appoint or remove any officer or member of the Board of Directors of the Association during the period of Class B Membership. Notwithstanding any provisions or restrictions contained in this Declaration, and rules and regulations adopted hereunder or any amendments to the foregoing, it shall be expressly permissible for the Declarant, and its respective agents, employees and approved builders during the period of Class B membership to maintain such facilities and carry out such construction activities as may be reasonably required, convenient or incidental to the development, improvement, completion and sale of any portion of the Properties, including without limitation, the installation and operation of sales and construction trailers and offices, sales models and appropriate signs; provided, however, that in the event a sales office has been maintained in any portion of a Lot such sales office must be removed and the original intended and approved use of such structure must be restored prior to conveyance from the Declarant or its assigns to any third party purchaser.

## ARTICLE 9-EASEMENTS/BUFFERS

SECTION 9.01. UTILITIES. Easements for the installation and maintenance of utilities (including, but not limited to water, sewer, gas, electricity, telephones, telecommunications, cable television and other utilities, such as a master antenna system) and drainage facilities are reserved as indicated on the recorded plats of the Properties. Within these easements no structures, planting or other material shall be placed or permitted to remain which may interfere with the installation and maintenance of utilities, or which may change the direction of flow of drainage channels in the drainage easements, or which may obstruct or retard the flow of water through drainage channels in the easements. The Association shall have the power and authority to grant and establish upon, over and across the Common Areas such additional easements as are necessary or desirable for the providing of service or utilities to the Common Areas or Lots.

SECTION 9.02. ENCROACHMENTS. In the event that any Improvements on a Lot shall encroach upon any Common Areas or upon any other Lot as a result of the initial Improvements constructed by Declarant or home builder or for any reason not caused by the purposeful or negligent act of the Owner or agents of such Owner, then an easement appurtenant to such Lot shall exist for the continuance of such encroachment upon the Common Areas or other Lot for so long as such encroachment shall naturally exist; and, in the event that any portion of the Common Areas shall encroach upon any Lot, then an easement shall exist for the continuance of such encroachment of the Common Areas into any such Lot for so long as such encroachment shall naturally exist.

SECTION 9.03. STRUCTURAL SUPPORT. Every portion of a Townhome on a Lot which contributes to the structural support of the building shall be burdened with an easement of structural support for the benefit of all other Townhomes within the building.

SECTION 9.04. EASEMENT FOR GOVERNMENTAL AGENCIES. An easement is hereby established over the Common Area for the benefit of applicable governmental agencies, utility companies and public service agencies (and any other Person providing services to the Properties under agreement with or at the direction of the Association) as necessary for setting, removing and reading of meters, replacing and maintaining water, sewer and drainage channels and facilities, utilities, and fire lines and acting for other purposes consistent with public safety and welfare, including without limitation, law enforcement, fire protection, emergency and rescue services, animal control, garbage collection and delivery of mail. An easement is hereby established for the benefit of the City over the Common Area and over the front five (5) feet of each Lot for the setting, removal and reading of water meters, the maintenance and replacement of water, sewer and drainage channels and facilities and the collection of garbage.

SECTION 9.05. WALKS, DRIVES, PARKING AREAS AND UTILITIES. All of the Properties, including Lots and Common Areas, shall be subject to such easements for driveways, walkways, parking areas, water lines, sanitary sewers, storm drainage facilities, gas lines, telephone and electric power lines, cable television lines, and other public utilities as shall be established prior to the conveyance of such Lots or the Common Area by the Declarant, and the Association shall have the power and authority to grant and to establish in, over, upon, and across the Common Areas conveyed to it such further easements as are requisite for the convenient use and enjoyment of the Properties without the assent of the membership except where the assent of the membership is required by applicable law. If a Lot is served by a driveway as indicated on a recorded plat of the Properties (provided such plat was approved by the Declarant or the Association), there is created an appurtenant easement over the Common Areas in favor of such Lot for the construction, reconstruction, repair and maintenance of such driveway and for the exclusive use of such driveway for ingress, egress, regress and parking purposes. Such driveway easement is subject to water, sewer, cable and utility lines lying under such driveway and the repair and maintenance of such lines. The Association and the other Owners shall not obstruct or interfere with the use of such driveway except as is incident to the repair and maintenance of Common Areas and water, sewer, cable and utility lines. If the Association obstructs or interferes with the permitted uses of such driveway, the Association shall make reasonable efforts to provide alternative parking for such Lot during the period of obstruction or interference.

SECTION 9.06. EASEMENTS APPURTENANT TO LOTS. All private streets and driveway areas in the Common Areas shall be subject to an easement in favor of every Lot to which they are adjacent or which they are intended to serve and shall be deemed appurtenant to each such Lot, whereby the Owner of each such Lot shall be entitled to use them as a means of ingress, egress and regress and such other uses as shall have been designated. Such easement shall be superior to the lien of every mortgage or deed of trust.

SECTION 9.07. EMERGENCIES, ETC.. Every Lot and Townhome shall be subject to an easement for entry by the Association for the purpose of correcting, repairing, or alleviating any emergency condition which arises upon any Lot or within any Townhome on any Lot and that endangers any Lot or portion of the Common Areas, or as necessary to correct any grading for drainage purposes.

SECTION 9.08. EASEMENTS TO ASSOCIATION. An easement is hereby granted to the Association, its officers, agents, employees, and authorized representatives, including but not limited to management companies, to enter in or to cross over the Common Area in connection with the exercise of any right, duty or obligation of the Association under this Declaration or its Organizational Documents.

SECTION 9.09. EASEMENT AND RIGHT OF ENTRY FOR REPAIR, MAINTENANCE AND RECONSTRUCTION. Each Owner of a Lot shall have shall have a perpetual access easement over the adjoining Lots and/or Common Area to the extent reasonably necessary to perform repair, maintenance or reconstruction of the Townhome on such Owner's Lot. Such repair, maintenance or reconstruction shall be done expeditiously, in good and workmanlike manner and in compliance with all applicable Laws, and upon completion of the work, the Owner shall restore the adjoining Lot to as near the same condition as that which prevailed prior to the commencement of the work as is reasonably practicable.

SECTION 9.10. ACCESS EASEMENT. Each Owner shall have the right to ingress and egress over, upon and across the Common Area as necessary for access to his Lot and shall have the right to lateral support for his Lot.

SECTION 9.11. EASEMENT RESERVED BY DECLARANT FOR DEVELOPMENT. Until December 31, 2010, notwithstanding any provisions contained in this Declaration to the contrary, Declarant hereby expressly reserves unto itself and its successors and assigns including, but not limited to Persons constructing dwellings and other Improvements on the Common Area or Lots, a nonexclusive, right, privilege and easement over, under, in, and/or on the Common Area, without obligation and without charge, for the purposes of construction, installation, relocation, development, sale, maintenance, repair, replacement, use and enjoyment, and/or otherwise dealing with the Properties, including but not limited to construction of the Amenities and installation of utilities. The reserved easement shall constitute a burden on the title to the Properties and specifically includes, but is not limited to:

A. The right of access, ingress, and egress for vehicular and pedestrian traffic over, under, on and through the Common Area; and the right to construct the Amenities; and the right to tie into any portion of the Properties with driveways, parking areas, and walkways; and the right to tie into and/or otherwise connect and use (without a tap-on or any other fee for so doing), replace, relocate, maintain, and repair any device which provides utility or similar services, including, without limitation, electrical, telephone, natural gas, water, sewer, and drainage lines and facilities, constructed or installed in, on, under, and/or over the Properties any damage caused by the exercise of such rights shall be repaired and the damaged property shall be restored to as near the same condition, as reasonable and practical, as that which existed prior to the exercise of such rights;

B. The right to construct, install, replace, relocate, maintain, authorize, repair, use, and enjoy signs, model residences, sales offices, construction offices and business offices as, in the sole opinion of Declarant, may be required, convenient, desirable, or incidental to the construction and sale of residences on the Lots;

C. No rights, privileges, and easements granted or reserved herein shall be merged into the title of any portion of the Properties, including, without limitation, Lots or Common Areas conveyed to the Association, but shall be held independent of such title, and no such right, privilege, or easement shall be surrendered, conveyed, or released unless and until and except by delivery of a quitclaim deed from Declarant releasing such right, privilege, or easement by express reference thereto; and

D. This section may not be amended without the written consent of Declarant.

SECTION 9.12. DRAINAGE. The Declarant reserves for itself and its assignees, including but not limited to the Association, the right and easement to enter upon any Lot or the Common Area for the purpose of altering the flow of surface water in, on or across such Lot or Common Area in order to correct surface water drainage problems existing on any Lot or the Common Area and for the purpose of installing, repairing, replacing and maintaining Stormwater Control Measures. Any alterations made pursuant to the foregoing easement shall be made at the sole cost and expense of the Declarant or its assigns, as the case may be, and shall not unreasonably interfere with the Owner's use and enjoyment of his Lot. Declarant hereby agrees that in exercising the rights reserved above, all debris, materials, excess soil and rock from an affected Lot shall be removed, all excavations shall be filled, all topsoil and grass on all disturbed earth shall be replaced and reseeded. Declarant may give its written consent to an Owner to alter the flow of surface water in, on or across such Owner's Lot in order to correct surface water drainage problems existing on such Lot; provided, however, that the Declarant during the period of the Class B Membership, and thereafter the Board of Directors or the Architectural Committee, as the case may be, must give its written approval to the Owner's plan to alter the flow of surface water on such Owner's Lot.

## ARTICLE 10-ANNEXATION OF ADDITIONAL PROPERTIES

SECTION 10.01 BY DECLARANT. If on or before December 31, 2010, the Declarant should develop additional lands adjacent to or directly across the street from the Properties, such additional lands may be annexed by the Declarant to said Properties without the assent of the Class A membership. In the event of annexation by the Declarant, the Declarant shall not be required to build the same or substantially similar type of dwelling units and the Declarant specifically reserves the right to build dwelling units of different types, styles, colors, sizes and prices.

SECTION 10.02. BY ASSOCIATION. Any other annexation of additional land shall require the assent of two-thirds (2/3) of each Class of Membership of the Association.

SECTION 10.03. PROCEDURE. Annexation of additional land shall be accomplished by recording in the Wake County Registry a Declaration of Annexation, duly executed by the Association, describing the lands annexed and incorporating the provisions of this Declaration, either by reference or by fully setting out said provisions of this Declaration. In the event of annexation by the Declarant pursuant to Section 10.01, the Declarant shall have the right to amend or supplement the terms of this Declaration as applicable to the additional lands as the Declarant deems advisable for the types, styles, colors, sizes and prices of the dwelling units to be developed on the additional lands. The additional lands shall be deemed annexed to the Properties on the date of recordation of the Declaration of Annexation. Upon annexation, the additional lands shall be used only for residential and ancillary purposes and shall be subject to this Declaration and all Owners shall automatically become Members of the Association. Common Areas within newly annexed additional lands shall be conveyed to the Association prior to the sale of any Lot within the newly annexed additional lands. Title to such Common Areas shall comply with Section 2.03 of this Declaration.

The Declaration of Annexation filed with respect to the Additional Properties in the Wake County Registry shall extend the scheme of this Declaration and the jurisdiction of the Association to such additional lands and thereby subject such additional lands to the rights, benefits, agreements, easements, restrictions and obligations set forth herein, including, but not limited to, assessments as herein determined. At the time of the filing of each Declaration of Annexation, there shall be recorded in the Wake County Registry a Map or Maps which show the boundary lines of each Lot annexed pursuant to such Declaration of Annexation and which delineates all Common Areas annexed pursuant to such Declaration of Annexation.

The obligation for Owners of Lots in any portion of the additional lands to pay the assessments described in Article 4 hereof shall commence upon the filing of the Declaration of Annexation in the Wake County Registry annexing such portion. The Owners of such Lots shall have the same voting rights as the Owners of Lots in the Properties, and such voting rights shall commence as of the date of the filing of the Declaration of Annexation.

ARTICLE 11-RIGHTS RESERVED UNTO INSTITUTIONAL LENDERS

SECTION 11.01. ENTITIES CONSTITUTING INSTITUTIONAL LENDERS. "Institutional Lender" as the term is used herein shall mean and refer to banks, savings and loan associations, insurance companies or other firms or entities customarily affording loans secured by first liens on residences, and eligible insurers and governmental guarantors.

SECTION 11.02. OBLIGATION OF ASSOCIATION TO INSTITUTIONAL LENDERS. So long as any Institutional Lender shall hold any first lien upon any Lot, or shall be the Owner of any Lot, such Institutional Lender shall have the following rights:

A. To inspect the books and records of the Association during normal business hours and to be furnished with at least one (1) copy of the annual financial statement and report of the Association prepared by an accountant designated by the Board of Directors of the Association, such financial statement or report to be furnished by May 15th of each calendar year;

B. To be given notice by the Association of the call of any meeting of the membership to be held for the purpose of considering any proposed amendment to this Declaration of Covenants, Conditions and Restrictions, the Organizational Documents of the Association or of any proposed abandonment or termination of the Association or the effectuation of any decision to terminate professional management of the Association and assume self management by the Association;

C. To receive notice of any condemnation or casualty loss affecting the Common Area or any portion thereof;

D. To be notified of any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association;

E. To have the right to approve of any alienation, release, transfer, hypothecation or other encumbrance of the Common Area, other than those specific rights vested in the Association under Article II hereof; and

F. To be given notice of any delinquency in the payment of any assessment or charge (which delinquency remains uncured for a period of sixty (60) days) by any Owner owning a Lot encumbered by a mortgage held by the Institutional Lender, such notice to be given in writing and to be sent to the principal office of such institutional Lender, or to the place which it may designate in writing.

SECTION 11.04. REQUIREMENTS OF INSTITUTIONAL LENDER. Whenever any Institutional Lender desires to avail itself of the provisions of this Article, it shall furnish written notice thereof to the Association by certified mail at the address of the Association's registered agent identifying the Lot or Lots upon which any such Institutional Lender holds any first mortgage together with sufficient pertinent facts to identify such mortgage, or identifying any Lot or Lots

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owned by such Institutional Lender and such notice shall designate the place to which notices, reports or information are to be given by the Association to such Institutional Lender.

## ARTICLE 12-GENERAL PROVISIONS

SECTION 12.01. UTILITY CHARGES. The Declarant reserves the right to subject a Lot (prior to the conveyance of such Lot to a third party) and any other portion of the Properties, to contracts with public utility companies for the installation of underground utility service and the installation of street lighting. Declarant further reserves the right to connect to each Lot necessary water and sewer service which may require a continuous monthly charge to the Owner of the Lot. Upon acceptance of a deed to the Lot each Owner agrees to pay said continuing monthly charges, if any.

SECTION 12.02. ENFORCEMENT. The Association and each Owner shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of the Declaration and the Organizational Documents. Failure by the Association or by any Owner to enforce any such restriction, condition, covenant, reservation, lien or charge shall in no event be deemed a waiver of the right to enforce any such restriction, condition, covenant, reservation, lien or charge at any other time or in connection with the same or any other event, nor shall it be deemed a waiver of the right to request that law enforcement, public safety and animal control officers come on the Properties to facilitate the enforcement of the applicable Laws.

SECTION 12.03. INSURANCE. Every Owner shall maintain in full force and effect at all times fire and hazard insurance in an amount equal to the full insurable value of his Townhome except that the amount shall not be required to exceed the replacement cost of the Townhome. An Owner shall exhibit to the Board, upon demand, evidence that such insurance is in effect. If any Owner shall fail to maintain such insurance, the Board is authorized to obtain such insurance in the name of the Owner from an insurer selected by the Board, and the cost of such insurance shall be added to and become a part of the annual assessment of the Owner and shall constitute a lien against such Owner's Lot until paid.

In the event the Association becomes the Owner of any buildings, or other improvements, or personal property, located within the Common Areas or such other areas that the Association is responsible for, the Board of Directors shall obtain hazard insurance (if available) in an amount equal to the maximum insurable replacement value as determined annually by the Board of Directors with the assistance of the insurance company providing such coverage. Such coverage shall provide protection against loss or damage by fire and other hazards covered by a standard extended coverage endorsement, and such other risks as from time to time shall be customarily covered with respect to buildings and properties similar in construction, location and use. The premiums for such insurance policies shall be a Common Expense of the Association.

The Board of Directors shall also procure and maintain public liability and property damage insurance, insuring: each member of the Board of Directors; the manager, if any; and the Association against any liability to the public or to the Owners (and their invitees, agents, and employees) arising out of or incident to the ownership and/or use of the Common Areas, or such other areas for which the Association is responsible. The insurance shall be issued on a comprehensive liability basis and shall contain a cross liability endorsement under which the rights of each named insured under the policy shall not be prejudiced with respect to his action against another named insured. The amount of such public liability insurance shall be determined by the Board of Directors, but in no event shall it be less than $1,000,000.00 per occurrence with regard to the Association and each individual director.

There shall also be obtained such other insurance coverage as the Board of Directors shall determine from time to time to be desirable and necessary. Premiums upon insurance policies purchased by the Board of Directors shall be paid by the Board of Directors as a Common Expense of the Association.

**(Recommendation to Owners - If a Townhome is damaged by fire or other casualty, and if such damage results in damage to an adjacent Townhome, there may be prolonged disputes between the insurance carriers of the adjacent damaged Townhomes (which may, in turn, delay the settlement of claims) unless the insurance protection on both Townhomes is provided by the same carrier. It is therefore recommended that the owners of all Townhomes located within each building purchase their fire and casualty insurance from the same insurance carrier.)**

SECTION 12.04. FIDELITY BONDS. The Association shall maintain blanket fidelity bonds or other similar insurance coverage for all officers, directors, trustees and employees of the Association and for all other persons handling or responsible for funds of or administered by the Association. Where the Association has delegated some or all of the responsibility for the handling of funds to a management agent, fidelity bonds or other similar insurance coverage shall be required for such management agent's officers, employees and agents handling or responsible for funds of, or administered on behalf of, the Association.

The total amount of fidelity bond coverage shall not be less than the estimated maximum of funds, including reserve funds, in the custody of the Association or the management agent, as the case may be, at any given time during the term of each bond. However, in no event shall the aggregate amount of such fidelity bonds be less than a sum equal to three months' aggregate assessments on all Lots plus reserve funds.

Fidelity bonds required herein shall:

A. name the Association as an obligee;

B. contain waivers by the issuers of the fidelity bonds of all defenses based upon the exclusion of persons serving without compensation from the definition of "employees", or similar terms or expressions; and

C. to the extent available without the payment of an additional premium, provide that they may not be cancelled or substantially modified (including cancellation for non-payment of premium) without at least 10 days prior written notice to the Association, to any such agent as the Association shall designate to negotiate settlement of insurance claims on behalf of the Association, and to any institutional lender servicing on behalf of the Federal National Mortgage Association any loan secured by any Lot.

The premiums on all such fidelity bonds for the Association (including premiums on fidelity bonds maintained by a management agent for its officers, employees and agents) shall be paid by the Association as a Common Expense.

Notwithstanding anything to the contrary, in lieu of fidelity bonds, insurance providing similar coverage or protection may be provided and references to "fidelity bonds" shall include such insurance.

SECTION 12.05. AMENDMENT. The covenants, conditions and restrictions of this Declaration shall run with the land, and shall inure to the benefit of and be enforceable by the Association or the Owner of any Lot subject to this Declaration, their respective legal representatives, heirs, successors, and assigns for a term of thirty (30) years from the date this Declaration is recorded, after which time, this Declaration shall automatically be extended for successive periods of ten (10) years each. Except as specifically otherwise provided herein, the covenants, conditions and restrictions of this Declaration may be amended as provided in this Article by the affirmative vote of or by an instrument signed by the Owners of not less than sixty-seven percent (67%) of the Lots. Any amendments must be recorded in the Office of the Register of Deeds of Wake County, North Carolina, or such other place as designated for the recording of documents affecting real estate (the "Wake County Registry")

SECTION 12.06. CERTIFICATE OF AMENDMENTS. If any amendment to these covenants, conditions, and restrictions is executed, each such amendment shall be delivered to the Board of Directors of this Association. Thereupon, the Board of Directors shall, within thirty (30) days, do the following:

A. Reasonably assure itself that the amendment has been approved or executed by the Owners of the required number of Lots (for this purpose, the Board may rely on its roster of Members, and shall not be required to cause the title to any Lot to be examined).

B. Attach to the amendment a certification as to its validity, which certification shall be executed by the Association in the same manner that these were executed. The following form of certification is suggested:

"CERTIFICATION OF VALIDITY OF AMENDMENT TO THE DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF POINTE VIEW TOWNS

By authority of its Board of Directors, the Pointe View Towns Owners Association, Inc. hereby certifies that the foregoing instrument has been duly approved or executed by the Owners of sixty-seven percent (67%) of the Lots of the Pointe View Towns and is therefore a valid amendment to existing Declaration Of Covenants, Conditions and Restrictions For Pointe View Towns.

POINTE VIEW TOWNS OWNERS
ASSOCIATION, INC.

By:______________________________________
President

ATTEST:

_________________________
Secretary"

C. Immediately and within the thirty (30) day period, aforesaid, cause the amendment to be recorded in the Office of the Register of Deeds of Wake County, North Carolina.

All amendments shall be effective from the date of recordation in the Office of the Register of Deeds of Wake County, North Carolina; provided, however, that no such instrument shall be valid until it has been indexed in the name of the Association. When any instrument purporting to amend the covenants, conditions, and restrictions has been certified by the Board of Directors, recorded and indexed as provided in this section, it shall be conclusively presumed that such instrument constitutes a valid amendment as to all Persons thereafter purchasing any Lot. All amendments shall be approved as set forth herein, as required.

<u>SECTION 12.07</u>. <u>VOTING</u>. Voting by Members of the Association shall be in accordance with the applicable provisions set forth in the Association's By-Laws.

<u>SECTION 12.08</u>. <u>SEVERABILITY</u>. Invalidation of any one of the covenants or restrictions by judgment or court order shall in no way affect any other provision which shall remain in full force and effect.

<u>SECTION 12.09</u>. <u>GENDER AND GRAMMAR</u>. The singular, wherever used herein shall be construed to mean the plural when applicable and the necessary grammatical changes required to make provisions hereby apply to either corporations or individuals, man or woman, shall in all cases be assumed as though in each case fully expressed.

<u>SECTION 12.10</u>. <u>LIABILITY EXEMPTIONS</u>. In no case shall the City, the County of Wake or the State be responsible for failing to provide any emergency or regular fire, police or other public service to the Common Area or the Lots or to their occupants when such failure is due to lack of access to such areas due to inadequate design or construction, blocking of access routes, inadequate maintenance, or any other factor within the control of the Declarant, the Association, the Owners or their occupants. In no case shall the City, the County of Wake or the State be responsible for maintaining any private street. Such responsibility shall rest with the Association and Owners

in that such private streets will not be constructed to the minimum standards sufficient to allow their inclusion for public maintenance.

SECTION 12.11. ADDRESS. Each Member agrees to keep Association informed of his address at any time and any notice sent or delivered to said address shall be sufficient. Each new Member agrees to provide the Association with evidence of his Ownership for preparation of a membership roster and the roster as so completed shall be sufficient evidence as the Ownership of each Lot. If a Member fails to provide the Association with its address or otherwise fails to keep its address current, the Association may use the address shown on the Wake County tax records for the Owner of the Lot for which such membership exists as the Member's address.

SECTION 12.12. DISPUTE RESOLUTION.

A. Consensus for Association Action.

(1) Except as provided in this Section, the Association may not commence a legal proceeding or an action under this Article without the approval of at least two-thirds (2/3rds) of the Members. This Section shall not apply, however, to (i) actions brought by the Association to enforce this Declaration or the Organizational Documents (including, without limitation, the foreclosure of liens); (ii) the imposition and collection of assessments; (iii) proceedings involving challenges to ad valorem taxation; or (iv) counterclaims brought by the Association in proceedings instituted against it.

(2) Prior to the Association or any Member commencing any proceeding to which Declarant is a party, including but not limited to an alleged defect of any Improvement, Declarant shall have the right to be heard by the Members, or the particular Member, and to access , inspect, correct the condition of, or redesign any portion of any Improvement as to which a defect is alleged or otherwise correct the alleged dispute.

B. Alternative Method for Resolving Disputes. Declarant, its officers, directors, employees and agents; the Association, its officers, directors and committee members; all Persons subject to this Declaration; any builder, its officers, directors employees and agents; and any Person not otherwise subject to this Declaration who agrees to submit to this Article (each such entity being referred to as a "Bound Party") agree to encourage the amicable resolution of disputes, without the emotional and financial costs of litigation. Accordingly, each Bound Party covenants and agrees to submit those claims, grievances or disputes described in Section 12.12(C) (collectively, "Claims") to the procedures set forth in Section 12.12(D).

C. Claims. Unless specifically exempted below, all Claims between any of the Bound Parties regardless of how the same might have arisen or on what it might be based including, but not limited to Claims (a) arising out of or relating to the interpretation, application or enforcement of the Declaration or the Organizational Documents or the rights, obligations and duties of any Bound Party under the Declaration or the Organizational Documents, (b) relating to the design or construction of Improvements; or (c) based upon any statements, representations, promises, warranties, or other communications made by or on behalf of any Bound Party shall be subject to the provisions of Section 12.12(D).

Notwithstanding the above, unless all parties thereto otherwise agree, the following shall not be Claims and shall not be subject to the provisions of Section 12.12(D):

(1) any suit by the Association against any Bound Party to enforce the provisions of Article 4 (Covenant For Assessments);

(2) any suit by the Association or Declarant to obtain a temporary restraining order or injunction (or equivalent emergency equitable relief) and such other ancillary relief as the court may deem necessary in order to maintain the status quo and preserve the Association's ability to act under and enforce the provisions of Article 5 (Architectural Control and Building Restrictions), Article 7 (Exterior Maintenance) or Article 8 (Use Restrictions);

(3) any suit between or among Owners, which does not include Declarant, a Builder or the Association as a party, if such suit asserts a Claim which would constitute a cause of action independent of the Declaration or the Organizational Documents; and

(4) any suit in which any indispensable party is not a Bound Party.

With the consent of all parties hereto, any of the above may be submitted to the alternative dispute resolution procedures set forth in Section 12.12(D).

D. Mandatory Procedures.

(1) Notice. Any Bound Party having a Claim ("Claimant") against any other Bound Party ("Respondent") (the Claimant and the Respondent referred to herein being individually, as a "Party," or, collectively, as the "Parties") shall notify each Respondent in writing (the "Notice"), stating plainly and concisely:

A. the nature of the Claim, including the Persons involved and Respondent's role in the Claim;

B. the legal basis of the Claim (i.e., the specific authority out of which the Claim arises);

C. the proposed remedy; and

D. the fact that Claimant will meet with Respondent to discuss in good faith ways to resolve the Claim.

(2) Negotiation and Mediation.

(i) The Parties shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation. If requested in writing, accompanied by a copy of the Notice, the Board may appoint a representative to assist the Parties in negotiation.

(ii) If the Parties do not resolve the Claim within 30 days after the date of the Notice (or within such other period as may be agreed upon by the Parties) ("Termination of Negotiations"), Claimant shall have 30 days to submit the Claim to mediation under the auspices of the American Arbitration Association ("AAA") in accordance with the AAA's Supplemental Mediation Procedures for Residential Construction.

(iii) If Claimant does not submit the Claim to mediation within such time, or does not appear for the mediation, Claimant shall be deemed to have waived the Claim, and Respondent shall be released and discharged from any and all liability to Claimant on account of such Claim; provided, nothing herein shall release or discharge Respondent from any liability to any Person other than the Claimant.

(iv) Any settlement of the Claim through mediation shall be documented in writing by the mediator and signed by the Parties. If the Parties do not settle the Claim within 30 days after submission of the matter to the mediation, or within such other time as determined by the mediator or agreed to by the Parties, the mediator shall issue a notice of termination of the mediation proceedings ("Termination of Mediation"). The Termination of Mediation notice shall set forth that the Parties are at an impasse and the date that mediation was terminated.

Each Party shall bear its own costs of the mediation, including attorneys' fees, and each Party shall share equally all charges rendered by the mediator. If the Parties agree to a resolution of any Claim through negotiation or mediation in accordance with Section 12.12(D) and any Party thereafter fails to abide by the terms of such agreement, then any other Party may file suit or initiate arbitration proceedings to enforce such agreement without the need to again comply with the procedures set forth in Section 12.12(D). In such event, the Party taking action to enforce the agreement shall be entitled to recover from the non-complying Party (or if more than one non-complying Party, from all such Parties pro rata) all costs incurred in enforcing such agreement, including without limitation, attorneys' fees and court costs.

(3) Binding Arbitration.

(i) Upon Termination of Mediation, Claimant shall thereafter be entitled to initiate final, binding arbitration of the Claim under the auspices of the AAA in accordance with the AAA's Supplemental Arbitration Procedures for Residential Construction. Such claims shall not be decided by or in a court of law. Any judgment upon the award rendered by the arbitrator may be entered in and enforced by any court having jurisdiction over such Claim. If the claimed amount exceeds $250,000.00, the dispute shall be heard and determined by three arbitrators. Otherwise, unless mutually agreed to by the parties, there shall be one arbitrator. Arbitrators shall have expertise in the area(s) of dispute, which may include legal expertise if legal issues are involved.

(ii) Unless provided otherwise by AAA's Supplemental Arbitration Procedures for Residential Construction, each Party shall bear its own costs and expenses and an equal share of the arbitrator's and administrative fees of arbitration. Notwithstanding the foregoing, if a Party unsuccessfully contests the validity or scope of arbitration in a court of law, the non-contesting party shall be awarded reasonable attorneys' fees and expenses incurred in defending such contest. All decisions respecting the arbitrability of any Claim shall be decided by the arbitrator(s).

(iii) The award of the arbitrator(s) shall be accompanied by detailed written findings of fact and conclusions of law. Except as may be required by law or for confirmation of an award, neither a party nor an arbitrator may disclose the existence, content, or results of any arbitration hereunder without the prior written consent of both parties.

E. Amendment of Article. Notwithstanding any other provision to the contrary, without the express prior written consent of Declarant, this Article may not be amended for a period of twenty years from the effective date of this Declaration.

SECTION 12.13. PROHIBITION AGAINST ASSOCIATION ENTERING INTO LONG TERM CONTRACT WHILE DECLARANT IN CONTROL OF BOARD OF DIRECTORS. Any contract or agreement entered into by the Association during any period of Class B Membership shall be subject to the right of the Association to terminate such contract or agreement, without cause, which is exercisable without penalty at any time upon not more than 90 days notice to the other party.

SECTION 12.14. STORMWATER CONTROL MEASURES-POTENTIAL FINES & LIENS. Stormwater Control Measures shall be maintained by the Association in strict compliance with applicable Laws and the failure to maintain Stormwater Control Measures is a violation of applicable Laws potentially subjecting each Lot Owner to significant daily penalties and other enforcement action. The Association shall have the right to impose assessments to pay any monies owed by the Association to the City pursuant to applicable Laws with respect to Stormwater Control Measures.

SECTION 12.15. CONFLICTS. In the case of any conflict between the Declaration and the Articles of Incorporation or By-Laws of the Association, the Declaration shall control, and in the case of any conflict between the Articles of Incorporation and the Bylaws of the Association, the Articles shall control.

[The rest of this page is left blank. Signatures are on the following page.]

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IN WITNESS WHEREOF, the Declarant have caused this Declaration to executed in its company name by its duly authorized Manager as of the day and year first above written.

**DECLARANT:**

**PETERSON PROPERTIES, LLC,**
a North Carolina limited liability company

By: ____________________
Name: Jeffrey Peterson
Title: Manager

STATE OF NORTH CAROLINA

COUNTY OF Wake

I, the undersigned Notary Public of the County and State aforesaid, do hereby certify that Jeffrey Peterson, Manager of **PETERSON PROPERTIES, LLC**, a North Carolina limited liability company, personally appeared before me this day and acknowledged the due execution of the foregoing instrument on behalf of said limited liability company.

Witness my hand and official seal, this the 16th day of August, 2004.

(SEAL-STAMP)

RODERICK W. O'DONOGHUE, JR.
NOTARY
PUBLIC
WAKE COUNTY, N.C.

____________________
Notary Public
My Commission expires: 7-11-2006

BK010971PG02184

EXHIBIT A

ARTICLES OF INCORPORATION OF ASSOCIATION

STATE OF NORTH CAROLINA
DEPARTMENT OF THE SECRETARY OF STATE

# ARTICLES OF INCORPORATION
# OF
# POINTE VIEW TOWNS OWNERS ASSOCIATION, INC.

(A North Carolina Nonprofit Corporation)

In compliance with the requirements of Chapter 55A of General Statutes of North Carolina, the undersigned, a resident of the State of North Carolina and of full age, has this day formed a corporation, not for profit, and does hereby certify the following:

## ARTICLE I
## NAME

The name of the corporation is the **Pointe View Towns Owners Association, Inc.** (hereinafter the "Association"). The Association is not a charitable or religious corporation as defined in Section 55A-1-40(4) of General Statutes of North Carolina.

## ARTICLE II
## PRINCIPAL OFFICE

The principal office of the Association is located at 521 E. Chatham Street, Cary, Wake County, N.C. 27511. The location of the principal office may be changed by a majority vote of the Board of Directors.

## ARTICLE III
## REGISTERED OFFICE AND INITIAL REGISTERED AGENT

The registered office of the Association is located at 521 E. Chatham Street, Cary, Wake County, N.C. 27511. The location of the registered office may be changed by a majority vote of the Board of Directors. The name of the initial registered agent at the above address is Jeffery Peterson.

## ARTICLE IV
## PURPOSE AND POWER OF THE ASSOCIATION

The Association does not contemplate a pecuniary gain or profit to the Members thereof. Subject to the provisions of Chapter 47F (as amended and recodified from time to time, the "Planned Community Act") and Chapter 55A (as amended and recodified from time to time, the "Non-Profit Act") of the General Statutes of North Carolina, the specific purposes for which the Association is formed are:

1. to own and maintain the Common Areas and to maintain the Properties within the subdivision known as Pointe View Towns located in Wake County, North Carolina (the "Planned Community"), as such Planned Community is more particularly described in a Declaration Of Covenants, Conditions And Restrictions For Pointe View Towns recorded, or to be recorded, in the Office of the Register of Deeds of

Wake County, North Carolina (said Declaration and all valid amendments thereto from time to time are collectively referred to as the "Declaration");

2. to provide for architectural control within the Planned Community;

3. to provide for maintenance and preservation of the residential Lots and Common Areas, and to promote the health, safety and welfare of the residents within the Planned Community and any additions thereto as may hereafter be brought within the jurisdiction of the Association; and

4. to exercise all of the powers necessary or desirable to perform the obligations and duties set out in these Articles, the Declaration, the Association's By-Laws and otherwise conferred by law, including without limitation, the following:

   (a) exercise all the powers and privileges and to perform all duties and obligations of the Association as set forth in the Declaration, as the same may be amended from time to time;

   (b) fix, levy, collect and enforce payment by any lawful means, all charges or assessments pursuant to the terms of the Declaration;

   (c) pay all expenses incurred in connection with collection of the charges and assessments set forth in subparagraph (b) above, and to pay all office and other expenses incident to the conduct of the business of the Association, including all licenses, taxes, or governmental charges levied or imposed against property owned by the Association;

   (d) acquire (by gift, purchase, or otherwise), own, hold, improve, build upon, operate, maintain, convey, sell, lease, transfer, dedicate for public use, or otherwise dispose of real or personal property in connection with the affairs of the Association; provided, however, that all conveyances and transfers of Common Areas must be done in accordance with all applicable laws, including but not limited to the code of ordinances of the Town of Cary;

   (e) borrow money and, with the assent of Members entitled to at least 80% of the votes of the entire membership of the Association, but in any event not less than 67% of the votes of the membership excluding the Declarant, and in accordance with the provisions of the Planned Community Act, mortgage, pledge, deed in trust, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred, subject to the property rights of the Members and the Association as provided in the Declaration;

   (f) dedicate, sell or transfer all or any part of the Common Area owned in fee simple by the Association to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed upon by the Members. No such dedication or transfer shall be effective unless Members entitled to cast at least 80% of the votes of the entire membership, but in any event not less than 67% of the votes of the membership excluding the Declarant, have signed a written instrument consenting or agreeing to such dedication, sale or transfer and unless such other agreement or consent as then required by the Planned Community Act and the ordinances, regulations and procedures, including variances, of the Town of Cary has been satisfied. Any such dedication or transfer shall be made subject to the rights and easements of the Association and the Owners established hereunder or under the Declaration, including but not limited to every Owner's easement for access, ingress and egress to such Owner's Lot; and

(g) participate in mergers and consolidations with the other non-profit corporations organized for the same or similar purposes in accordance with the Planned Community Act; and

5. to have and exercise any and all powers, rights, and privileges which a not-for-profit corporation may now or hereinafter have or exercise.

The foregoing enumeration of powers shall not limit or restrict in any manner the exercise of other powers which may now or hereafter be permitted by the Non-Profit Act or the Planned Community Act, as the same may be amended from time to time.

## ARTICLE V
## MEMBERSHIP AND VOTING RIGHTS

Every person or entity who is a record Owner of the fee simple title to any Lot subject to the Declaration, including contract sellers, shall be a Member of the Association. The foregoing is not intended to include Persons who hold an interest merely as security for the performance of an obligation. Membership shall be appurtenant to and may not be separated from the ownership of any Lot. Ownership of a Lot shall be the sole qualification for membership. The Board of Directors may make reasonable rules relating to the proof of ownership of a Lot in the Planned Community. Following termination of the Property as a planned community under the provisions of the Planned Community Act, all persons entitled to distributions of proceeds under the Planned Community Act shall be Members of the Association.

No Owner, whether one or more Persons shall have more than one (1) membership for each Lot owned. In the event the Owner of a Lot is more than one Person, the votes associated with such Lot shall be cast as provided in the Planned Community Act.

The Association shall have two classes of voting membership:

Class A: Class A Members shall be all Owners of Lots with the exception of the Class B Member, if any. Class A Members shall be entitled to one (1) vote for each Lot owned. The Class B Member shall be a Class A Member upon the termination of Class B Membership.

Class B: The Class B Member shall be the Declarant and its assigns and each Class B Member shall be entitled to three (3) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership upon the occurrence of any of the following events, whichever occurs first:

(a) When the total votes outstanding in Class A membership equals the total votes outstanding in Class B membership, but provided that the Class B membership shall be reinstated if thereafter and before the time stated in subparagraph (b) below, additional land is annexed to the Planned Community without the assent of Class A Members for the development of such additional land by the Declarant, as provided in the Declaration, but in any event the Class B membership shall terminate when 75% of the Lots have been deeded to Owners other than the Declarant;

(b) On December 31, 2010; or

(c) Upon the surrender of the Class B membership by the Declarant.

## ARTICLE VI
## BOARD OF DIRECTORS

The affairs of the Association shall be managed by an initial Board of three (3) Directors, who need not be Members of the Association. So long as there is a Class B membership, the affairs of the Association shall be managed by a Board of Directors consisting of three (3) directors appointed or designated from time to time by the Declarant. The Directors appointed by the Declarant need not be Members of the Association unless otherwise required by applicable law.

Not later than sixty (60) days after the termination of the Class B Membership (or such earlier date as required by law), the Members shall elect a new Board of Directors as provided by the Planned Community Act, which Board may be composed of some or all of the Directors that had served as Directors by appointment by the Declarant. Thereafter, Directors shall be elected at the annual meeting of the Members. All Directors shall be elected for a term of one (1) year or until his or her death, resignation, removal or until his or her successor is elected. The number of Directors and their terms of office may be changed by amendment of the Association's By-Laws, provided that the number of Directors shall not be less than three (3) nor more than nine (9) and the number of Directors shall always be an odd number. Any directorships not filled by the Members shall be treated as vacancies to be filled by and in the discretion of the Board of Directors except as otherwise provided by the Planned Community Act or other applicable laws. A majority of the Directors elected by the Members, or such other number or percentage as then may be provided by the Planned Community Act, shall be Members of the Association or officers, directors, shareholders, trustees, partners, members or managers of Members which are entities.

## ARTICLE VII
## FINANCE

The Association is a non-stock corporation and no part of the profits (if any) of the Association shall inure to the pecuniary benefit of its Members or to any other person except as provided in the Planned Community Act or the Non-Profit Act or otherwise as may be permitted by law.

## ARTICLE VIII
## DISSOLUTION

The Association may be dissolved only upon the signed written assent of Members entitled to at least 80% of the votes appurtenant to each class of membership. Upon dissolution of the Association, other than the incident to a merger of consolidation, the assets of the Association shall be sold, transferred and distributed in accordance with the Planned Community Act and the Non-Profit Act. Upon dissolution of the Association, other than incident to a merger or consolidation, and unless prohibited by applicable law, the Common Areas owned in fee simple by the Association first shall be offered to the Town of Cary or other appropriate public body or agency to be used for purposes similar to those for which the Common Areas are intended. If such offer is accepted, the Common Areas shall be deeded to the Town of Cary or such other appropriate public body or agency. In the event that such dedication is refused acceptance, such Common Areas shall be deeded to any nonprofit corporation, nonprofit association, nonprofit trust or other nonprofit organization to be used for purposes similar to those for which the Common Areas are intended.

## ARTICLE IX
## DURATION

The period of existence of this Association is perpetual.

## ARTICLE X
## AMENDMENTS

Amendments of these Articles shall require the assent of the Members entitled to at least sixty-seven percent (67%) of the entire membership.

## ARTICLE XI
## INDEMNIFICATION

To the fullest extent permitted by the North Carolina Non-Profit Corporation Act and the North Carolina Planned Community Act, as such acts now exist or may hereafter be amended, no person who is serving or who has served as a director, officer, employee or committee member of the Association shall be personally liable for monetary damages for breach of any duty as a director, officer, employee or committee member of the Association. The Association shall indemnify its directors, officers, employees and committee members to the maximum extent required or permitted by applicable law, including but not limited to Part 5 of Article 8 of Chapter 55A of the North Carolina General Statutes, as amended from time to time, or by any similar statute by which it is amended, supplemented or repealed. Any person who serves in any such capacity of or on behalf of the Association shall be deemed to have done so in reliance upon and in consideration of such indemnification. Such indemnification shall inure to the benefit of such person and his or her heirs, successors, assigns and legal representatives, and it shall not be exclusive of any other rights to which such person may be entitled. Any repeal or modification of this shall be prospective only and shall not adversely affect any limitation hereunder with respect to acts or omissions occurring prior to such repeal or modification.

## ARTICLE XII
## DEFINITIONS

Except as clearly indicated to the contrary in these Articles, the definitions contained in the Declaration shall be applicable in these Articles.

## ARTICLE XIII
## CONFLICTS

In the case of any conflict between these Articles of Incorporation and the By-Laws of the Association, these Articles shall control; and in the case of any conflict between the Declaration and these Articles of Incorporation or the By-Laws of the Association, the Declaration shall control. These Articles of Incorporation are subject to the requirements of Chapter 47F and Chapter 55A of the North Carolina General Statutes, as amended, replaced and recodified from time to time. In the event these Articles of Incorporation conflict with the provisions of said statutes, it is hereby acknowledged and agreed that the provisions of such statutes will control.

## ARTICLE XIV
## INCORPORATOR

The name and address of the incorporator is as follows:

Rod O'Donoghue, Jr.
1100 Navaho Drive, Suite 106
Wake County
Raleigh, NC 27609

IN WITNESS WHEREOF, I, the undersigned incorporator have hereunto set my hand and seal this 13th day of August, 2004.

Rod O'Donoghue, Jr., Incorporator

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**EXHIBIT B**

**BYLAWS OF ASSOCIATION**

**BY-LAWS
OF
POINTE VIEW TOWNS OWNERS ASSOCIATION, INC.**

## ARTICLE I - NAME AND LOCATION

The name of the corporation is Pointe View Towns Owners Association, Inc., hereinafter referred to as the "Association". The principal office of the Association shall be located at 521 E. Chatham Street, Cary, Wake County, N.C. 27511, but meetings of Members and directors may be held at such places within the State of North Carolina, Wake County, as may be designated by the Board of Directors.

These are the Bylaws of the Association, a non-profit corporation under the laws of the State of North Carolina, the Articles of Incorporation of which were filed with the Office of the Secretary of State. The Association has been organized for, among other purposes, the purpose of administering the operation and management of the Common Areas of the Pointe View Towns (the "Planned Community"), a subdivision located in Wake County, North Carolina, as shown on a plat recorded in Book of Maps 2004, Pages 1334 and 1335, inclusive, and described in the Declaration Of Covenants, Conditions And Restrictions For Pointe View Towns, and all amendments thereto, recorded in the Office of the Register of Deeds of Wake County, North Carolina.

## ARTICLE II - DEFINITIONS

Except as specifically provided otherwise in these Bylaws, the definitions in the Declaration are incorporated by reference into these Bylaws. Further, the following definitions apply to these Bylaws:

2.1 "Association" shall mean and refer to Pointe View Towns Owners Association, Inc., a North Carolina non-profit corporation, its successors and assigns.

2.1 "Amenities" means the improvements, if any, constructed, erected, installed or existing on the Common Area for the common use, benefit and enjoyment of the Properties by the Owners, such as clubhouses, playgrounds and greenways. Initially, no Amenities are proposed.

2.3 "Board of Directors" or "Board" means those persons elected or appointed and acting collectively as the Directors of the Association.

2.4 "City" shall mean the Town of Cary, North Carolina.

2.5 "Common Areas" shall mean all real property owned by the Association and the easements granted to the Association for the common use, benefit and enjoyment of the Properties by the Owners. Common Areas shall also mean the facilities constructed, erected or installed on the real property which is part of the Common Areas for the use, benefit and enjoyment of the Owners, including without limitation, the Amenities and the following:

A. All central appurtenant installations for services such as electricity, gas, telephone and cable television;

B. All water lines and mains, sanitary sewer system and storm sewer system outside of public street rights-of-way serving more than one Lot;

C. Private streets, drives, parking areas, medians traffic and landscape islands on private streets, street yard areas, subdivision signs and entrances on the Properties or serving the Properties, but excluding driveways serving individual Lots;

D. All Amenities for the use and enjoyment of the Members;

E. All of the parts of the Properties and facilities and Amenities existing in or upon the Properties for common use which is necessary or convenient to the existence, enjoyment, use, maintenance or safety of the Properties;

F. Any storm water detention easements, drainage easement and Reservoir Watershed Protection Access and Maintenance Easement shown on the Plat or future map recordings however named; and

G. Open space, including any permanently protected undisturbed open space areas.

2.6 "Common Expenses" shall mean and include:

A. All sums lawfully assessed by the Association against its Members;

B. Expenses for maintenance as further provided in the Declaration or the Association's Organizational Documents;

C. Expenses of administration, maintenance, repair, or replacement of the Common Areas;

D. Expenses declared to be Common Expenses by the provisions of the Declaration or the Association's Organizational Documents;

E. Premiums for hazard, liability and such other insurance as the Declaration or the Association's Organizational Documents may require or authorize the Association to purchase or which the Association is required by law to purchase;

F. Ad valorem taxes and assessment charges lawfully levied against the Common Areas owned in fee simple by the Association, including but not limited to those taxes and assessments set forth in Section 2.07 below;

G. Expenses agreed by the Members to be Common Expenses of the Association;

H. Costs and expenses associated with the Association's purchase and reconstruction of Townhomes as provided in the Declaration;

I. Unpaid assessments resulting from the purchase of a Townhome at a foreclosure sale (such assessment shall be collectible from all Members of the Association, including the purchaser at the foreclosure sale, his successors and assigns).

J. Utilities used in connection with the Common Area;

K. Fees for services of accountants, attorneys, managers and other professionals engaged by the Association;

L. Payments to the City and other governmental bodies as required by applicable Laws, including but not limited to, payments with respect to the storm water detention easement and Stormwater Control Measures;

M. the costs and expenses of maintenance of the storm water detention easement and Stormwater Control Measures; and

N. All expenses classified as Common Expenses pursuant to the Planned Community Act.

2.7 "Declarant" shall mean and refer to Peterson Properties, LLC, a North Carolina limited liability company, and its successors and assigns as provided in the Planned Community Act.

2.8 "Declaration" means the Declaration Of Covenants, Conditions And Restrictions For Pointe View Towns recorded in the Office of the Register of Deeds of Wake County, North Carolina, and all valid amendments thereto.

2.9 "Governing Documents" means these Bylaws, the Declaration and the Articles of Incorporation of the Association.

2.10 "Legal Requirements" means the requirements imposed by the laws and regulations of the State of North Carolina, Wake County and the City, as well as the requirements imposed by the Governing Documents.

2.11 "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map of the Properties (provided said map has been approved by Declarant or the Association), with the exception of the Common Areas owned in fee simple. Except where otherwise indicated by context, the term "Lot" shall include the improvements on such Lot.

2.12 "Map" or "Maps" shall mean and refer to any map of the Properties constituting additional phases (if they are annexed pursuant to Article 10 hereof) which may be recorded by Declarant in the Wake County Registry hereafter.

2.13 "Member" shall mean and refer to every person or entity who holds membership in the Association.

2.14 "Mortgage" means any mortgage, deed of trust, and any and all similar instruments used for the purpose of conveying or encumbering real property as security for the payment or satisfaction of an obligation.

2.15 "Mortgagee" shall include a beneficiary or holder of a deed of trust, as well as a mortgagee under a mortgage.

2.16 "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple interest (or undivided fee simple interest) in any Lot which is a part of the Properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

2.17 "Person" means any individual, corporation, partnership, limited liability company, association, trustee, or other legal entity.

2.18 "Planned Community" shall mean the Pointe View Towns located on West Dynasty Drive in the Town of Cary, Wake County, North Carolina, and consisting of the Properties.

2.19 "Planned Community Act" shall mean the provisions of Chapter 47F of the General Statutes of North Carolina applicable to the Properties, as such provisions shall be amended and recodified from time to time.

2.20 "Property" or "Properties" shall mean and refer to that certain real property described in the Declaration affecting real property now within the jurisdiction of the Association and such additions thereto as hereafter may be annexed and brought within the jurisdiction of the Association.

2.21 "Stormwater Control Measures" shall mean and refer to private drain pipes, grass swales, level spreaders, storm water detention ponds, its inlets and outlets, and other reservoir watershed protection and/or stormwater control facilities, structures, appurtenances and vegetation located on the Property together with drainage easements, however named, and all other storm drainage pipes, which serve more than one Lot that are located outside public street rights-of-way.

2.22 "Townhome" or "Townhouse" shall mean and refer to an attached single family dwelling or place of residence constructed upon a Lot within the Properties and constituting a part of a building.

## ARTICLE III - ASSOCIATION OFFICES

3.1 Principal Office. The principal office of the Association shall be located at 521 E. Chatham Street, Cary, Wake County, N.C. 27511, or at such other place as shall be determined by a majority of the Board of Directors of the Association.

3.2 Registered Office. The registered office of the Association required by law to be maintained in the State of North Carolina may be, but need not be, identical with the principal office. The registered office shall be at such place as shall be determined by a majority of the Board of Directors of the Association.

3.3 Other Offices. The Association may have offices at such other places as the Board of Directors may designate or as the affairs of the Association may require from time to time.

## ARTICLE IV - MEMBERSHIP

4.1 Membership. Every Owner of a Lot shall be a Member of the Association. The foregoing is not intended to include Persons who hold an interest merely as security for the performance of an obligation. Membership shall be appurtenant to and may not be separated from ownership of a Lot. Ownership of a Lot shall be the sole qualification for membership. The Board of Directors may make reasonable rules relating to the proof of ownership of a Lot. Following termination of the Properties as a planned community under the provisions of the Planned Community Act, all persons entitled to distributions of proceeds under the Planned Community Act shall be Members of the Association.

No Owner, whether one or more Persons, shall have more than one (1) membership for each Lot owned. If only one of the multiple Owners of a Lot is present at a meeting of the Association, the Owner who is present is entitled to cast all the votes allocated to that Lot. If more than one of the multiple Owners of a Lot are present, the votes allocated to that Lot may be cast only in accordance with the agreement of a majority in interest of the multiple owners. Majority agreement is conclusively presumed if any one of the multiple Owners of that Lot casts the votes allocated to that Lot without protest being made promptly to the person presiding over the meeting by any of the other Owners of the Lot.

4.2 Classes of Membership. The Association shall have two classes of voting membership:

Class A: Class A Members shall be all Owners of Lots with the exception of the Class B Member, if any. Class A Members shall be entitled to one (1) vote for each Lot owned. The Class B Member shall be a Class A Member upon the termination of Class B Membership.

Class B: The Class B Member shall be the Declarant and its assigns and each Class B Member shall be entitled to three (3) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership upon the occurrence of any of the following events, whichever occurs first:

(a) When the total votes outstanding in Class A membership equals the total votes outstanding in Class B membership, but provided that the Class B membership shall be reinstated if thereafter and before the time stated in subparagraph (b) below, additional land is annexed to the Planned

Community without the assent of Class A Members for the development of such additional land by the Declarant, as provided in the Declaration, but in any event the Class B membership shall terminate when 75% of the Lots have been deeded to Owners other than the Declarant;

(b) On December 31, 2010; or

(c) Upon the surrender of the Class B membership by the Declarant.

4.3 Suspension. The Board of Directors may suspend the rights of a Member and such Member's family, tenants, occupants, guests and invitees, to use the recreational facilities (including but not necessarily limited to the Amenities) and other rights of a Member as permitted by law during any period in which such Member shall be in default in the payment of any assessment levied by the Association. Such rights may also be suspended after notice and hearing, for the period of the infraction plus a reasonable period not to exceed sixty (60) days, for infraction or violation of any provision of the Declaration, these Bylaws or published rules and regulations of the Association.

## ARTICLE V - MEETINGS OF MEMBERS

5.1 Place of Meetings. All meetings of Members shall be held at such place within the State of North Carolina and Wake County as shall be designated on the notice of the meeting or agreed upon by a majority of the votes of the Members entitled to vote thereat.

5.2 Annual Meetings. The annual meeting of the Members for the election of directors and the transaction of other business shall be held within the month of December each year at such time and at such place as determined by the Board of Directors. The annual meeting shall be held at least once a year.

5.3 Substitute Annual Meeting. If the annual meeting shall not be held within the month designated by these By-Laws, a substitute annual meeting may be called in accordance with the provisions of Section 5.4 of this Article V. A meeting so called shall be designated and treated for all purposes as the Annual Meeting.

5.4 Special Meeting. Special meetings of the Members may be called at any time by the President, a majority of the Board of Directors of the Association, or by Members owning not less than 10% of all votes in the Association.

5.5 Notice of Meetings. Written or printed notice stating the time and place and purpose of the meeting shall be given not less than 10 days nor more than 60 days before the date of any Members meeting, either by hand delivery or sent by prepaid U.S. Mail to the mailing address of each Member entitled to such notice, by or at the direction of the Secretary, to each Member of record entitled to vote at such meeting. Notice of any meeting shall be given as provided in the Planned Community Act, including a statement of the purposes of such meeting if required by such Act.

When a meeting is adjourned for 30 days or more, notice of the adjourned meeting shall be given as in the case of an original meeting. When a meeting is adjourned for less than 30 days in any one adjournment, it is not necessary to give any notice of the adjourned meeting other than by announcement at the meeting at which the adjournment is taken.

5.6 Voting Lists. At least ten days before each meeting of Members, the Secretary of the Association shall prepare an alphabetical list of the Members entitled to vote at such meeting or any adjournment thereof, with the address of and number of votes held by each, which list shall be kept on file at the registered office of the Association for a period of ten days prior to such meeting, and shall be subject to inspection by any Member at any time during the usual business hours. This list shall be produced and kept open at the time and place of the meeting and shall be subject to inspection by any Member during the whole time of the meeting. If more than one person owns a Lot, the vote allocated to such Lot shall be cast in accordance with the provisions of the Planned Community Act.

5.7 Quorum. One-tenth (1/10th) of the votes of each Class of Members of the Association entitled to vote, represented in person or by proxy at the beginning of the meeting, shall constitute a quorum at a meeting of Members for any action except as required by law or as otherwise provided in the Governing Documents. The Members present at a duly organized meeting may continue to transact business until adjournment, notwithstanding the withdrawal of enough Members to leave less than a quorum.

In the absence of a quorum at any meeting of Members, such meeting may be adjourned by a vote of the majority of the votes present in person or proxy from time to time without notice, other than announcement at the meeting, until a quorum shall be present or represented, and at any adjourned meeting at which a quorum is present, any business may be transacted which might have been transacted at the original meeting. The quorum requirements shall be reduced for the next meeting after adjournment for lack of a quorum as provided in the Planned Community Act.

5.8 Proxies. At all meetings of Members, votes may be voted either in person or by one or more agents authorized by a written proxy executed by the Member or by his duly authorized attorney in fact. All proxies must be in writing and filed with the Secretary of the Association. A proxy is not valid after the expiration of eleven (11) months from the date of its execution, unless the person executing it specifies therein a shorter term. A proxy is void if not dated. Every proxy shall be revocable and shall automatically cease upon conveyance by the Member of his Lot. A Lot Owner may not revoke a proxy given pursuant to these Bylaws except by actual notice of revocation to the person presiding over the meeting of the Association. Votes allocated to a Lot may be cast pursuant to a proxy duly executed by a Lot Owner. If a Lot is owned by more than one person, each Owner of the Lot may vote or register protest to the casting of votes by the other Owners of the Lot through a duly executed proxy.

5.9 Voting. The vote on any matter of a majority of the votes of each Class of Members present at a meeting of Members shall be the act of the Members on that matter, unless the vote of a greater number is required by the Declaration, these By-Laws, the Planned Community Act or by law. If only one of the multiple Owners of a Lot is present at a meeting of the Association, the

Owner who is present is entitled to cast all the votes allocated to that Lot. If more than one of the multiple Owners of a Lot are present, the votes allocated to that Lot may be cast only in accordance with the agreement of a majority in interest of the multiple owners. Majority agreement is conclusively presumed if any one of the multiple Owners of that Lot casts the votes allocated to that Lot without protest being made promptly to the person presiding over the meeting by any of the other Owners of the Lot.

5.10 Informal Action. Any action which may be taken at a meeting of the Members may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the Persons who would be entitled to vote upon such action at a meeting, and filed with the Secretary of the Association to be kept as part of the Association's records.

5.11 Waiver of Notice. Any Member may, at any time, waive notice of any meeting with the Members in writing and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a Member at any meeting of the Members shall constitute a waiver of notice by him of the time and place thereof except where a Member attends a meeting for the express purpose of objecting to the transaction of any business because the meeting was not lawfully called. Except as otherwise required by applicable law, if all the Members are present at any meeting of the Members, no notice shall be required and any business may be transacted at such meeting.

5.12 Presiding Officer. The President of the Association, or in the absence of the President, the Vice-President, shall preside at all meetings of the Members. The Secretary of the Association shall act as the Secretary of the meeting, or in the absence of the Secretary, the President shall designate some other person to act as the Secretary of the meeting. In the absence of both the President and Vice-President, the Members present at the meeting shall elect a Presiding Officer for such meeting.

5.13 Order of Business. The order of business at the annual meeting and at any special meeting of the Members shall be as follows:

(a) The calling of the meeting to order;
(b) The calling of the roll;
(c) The announcement by the Presiding Office of the purpose of the meeting and of the nature of the business which may be presented by it;
(d) The reading and approval of the minutes of any former meeting of the Members if such minutes have not been previously read and approved;
(e) The presentation of and action, if required, upon reports of officers and committees;
(f) unfinished business;
(g) new business, including the election of directors for the forthcoming year if the meeting be an annual meeting; and
(h) Adjournment.

5.14 Forms of Proxy. The following form of proxy shall be deemed sufficient, but any other form may be used which is sufficient by law:

POINTE VIEW TOWNS OWNERS ASSOCIATION, INC.

Know all men by these presents that the undersigned member of Pointe View Towns Owners Association, Inc. (the "Association") hereby constitutes and appoints ______________________________ the special attorney in fact and proxy of the undersigned to annual and special meetings of the members of the Association, at which I am not present, until the secretary of the Association receives from me a letter revoking this proxy and for and on behalf of the undersigned to vote as the undersigned would be entitled to vote if personally present, hereby ratifying and confirming all that said attorney and proxy shall do in the premises, and giving and granting unto said attorney and proxy full power of substitution and revocation.

Dated: _______________, 20___.

_________________________________
Member
Witness: ____________________________

## ARTICLE VI - BOARD OF DIRECTORS

6.1 Number, Term and Qualification. The affairs of this Association shall be managed by a Board of Directors. So long as there is a Class B Membership, the affairs of this Association shall be managed by a Board of Directors consisting of three (3) Directors appointed by the Declarant, who need not be Members of the Association. Notwithstanding any other provision to the contrary, during the period of Class B Membership, the Declarant shall have the right to appoint, designate and remove the persons to serve as the Board of Directors of the Association. Any Director so appointed or elected by the Declarant need not be a Member of the Association.

Not later than sixty (60) days after the termination of the Class B Membership (or such earlier date as required by law), the Members shall elect a new Board of Directors, which Board may be composed of some or all of the Directors appointed by the Declarant. Thereafter, Directors shall be elected at the annual meeting of the Members. All Directors shall be elected for a term of one (1) year or until his or her death, resignation, removal or his or her successor is elected. The number of Directors and their terms of office may be changed by amendment of these By-Laws, provided that the number of Directors shall not be less than three (3) nor more than nine (9) and the number of Directors shall always be an odd number. Any directorships not filled by the Members shall be treated as vacancies to be filled by and in the discretion of the Board of Directors except as otherwise provided by the Planned Community Act or other applicable statutes of North Carolina. A majority of the Directors elected by the Members, or such higher number as then required by the Planned Community Act, shall be Members of the Association or officers, Directors, shareholders, trustees, partners, members or managers of Members which are entities.

6.2 Nomination. After the first election of directors, nominations for election to the Board shall be made by a Nominating Committee. Nominations may also be made from the floor at the annual meeting. Nominations at the first meeting will be from the floor. The Nominating Committee shall consist of a Chairman, who shall be a member of the Board, and two or more

Members of the Association. The Nominating Committee shall be appointed by the Board prior to each annual meeting of the Members, to serve from the close of such annual meeting until the close of the next annual meeting and such appointment shall be announced at each annual meeting. The Nominating Committee shall make as many nominations for election to the Board as it shall in its discretion determine, but not less than the number of vacancies to be filled.

6.3 Election of Directors. Except as provided in Sections 6.1 and 6.5 of this Article VI, the Directors shall be elected at the meeting of Members and those persons who receive the highest number of votes, whether cast in person or by proxy, shall be deemed to have been elected. If any Member so demands, the election of Directors shall be by secret written ballot. Cumulative voting is not permitted.

6.4 Removal. Any director may be removed at any time, with or without cause, by a vote of the Members holding a majority of the outstanding votes entitled to vote to elect that director. If any Directors are so removed, new Directors may be elected at the same meeting. Additionally, any director who has three (3) consecutive unexcused absences may be removed by majority vote of the Directors.

6.5 Vacancies. Any vacancy occurring in the Board of Directors (caused by death, resignation, removal or otherwise) may be filled by the affirmative vote of a majority of the remaining Directors even though less than a quorum, or by the sole remaining director. A director elected to fill a vacancy shall be elected for the unexpired term of his predecessor in office. Any directorship to be filled by reason of an increase in the authorized number of Directors shall be filled only by election at an annual meeting or at a special meeting of Members called for that purpose.

6.6 Compensation. The Board of Directors may not compensate Directors for their services as such, but may, by prior approval, provide for the payment of any or all actual expenses incurred by Directors in performing their duties.

## ARTICLE VII - MEETINGS OF DIRECTORS

7.1 Regular Meetings. A regular meeting of the Board of Directors shall be held immediately after the annual meeting of the Members for the purpose of electing officers. In addition, the Board of Directors shall hold regular meetings at least quarterly without notice and the Board may provide, by resolution, the time and place for the holding of additional regular meetings.

7.2 Special Meetings. Special meetings of the Board of Directors may be called by or at the request of the President or any two Directors. Such a meeting may be held as fixed by the person or persons calling the meeting.

7.3 Notice of Meetings. Regular meetings of the Board of Directors may be held without notice. The person or persons calling a special meeting of the Board of Directors shall, at least 10 days and not more than 60 days before the meeting, give notice thereof by any usual means of communication. Such notice need not specify the purpose for which the meeting is called.

7.4 Waiver of Notice. Any director may waive notice of any meeting. The attendance by a director at a meeting shall constitute a waiver of notice of such meeting, except where a director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened.

7.5 Quorum. A majority of the number of Directors fixed by these By-Laws present at the beginning of the meeting shall constitute a quorum for the transaction of business at any meeting of the Board of Directors.

7.6 Manner of Acting. Except as otherwise provided in these By-Laws, the act of the majority of the Directors present at a meeting at which a quorum is present shall be the act of the Board of Directors.

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

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

7.9 Committees of the Board. The Board of Directors shall designate three (3) individuals, who need not be Members, to constitute an Architectural Committee as provided in the Declaration and may appoint other committees as it deems appropriate. The designation of any committee and the delegation thereto of authority shall not operate to relieve the Board of Directors of any responsibility or liability imposed upon it or him by law.

## ARTICLE VIII - POWERS/DUTIES OF THE BOARD OF DIRECTORS

8.1 Powers. The Board of Directors shall have the power to:

(a) adopt and publish rules and regulations governing the use of the Common Area, and Amenities, and the personal conduct of the Members and their guests thereon, and to establish fines and penalties for the infraction thereof;

(b) suspend a Member's right to use of the recreational facilities as provided elsewhere in the Governing Documents and the Planned Community Act;

(c) exercise for the Association all powers, duties and authority vested in or delegated to this Association and not reserved to the membership by other provisions of these

By-Laws, the Articles of Incorporation, the Declaration or the Planned Community Act;

(d) declare the office of a Director to be vacant in the event such Director shall be absent from three (3) consecutive regular meetings of the Board of Directors, unless such absence or absences are excused by the Board of Directors;

(e) employ a manager, independent contractors, or such employees as they deem necessary, and to prescribe their duties. During Class B membership, all contracts shall contain a provision which allows the Association to terminate the contract at will upon 90 days notice without penalty;

(f) to employ attorneys, accountants and other professionals on behalf of the Association when deemed necessary;

(g) to grant further easements upon, over, under and across the Common Areas as are requisite for the convenient use and enjoyment of the Properties, including but not limited to easements for the installation and maintenance of sewerage, utilities or drainage facilities, without the assent of the membership except where the assent of the membership is required by applicable law; and

(h) to exercise any other powers necessary and proper for the governance and operation of the Association.

8.2 Duties. It shall be the duty of the Board of Directors to:

(a) cause to be kept a complete record of all its acts and corporate affairs and to present a statement thereof to the Members at the annual meeting of the Members, or at any special meeting when such statement is requested in writing by one-fourth (1/4) of any class of Membership who are entitled to vote at such meeting;

(b) supervise all officers, agents, and employees of this Association, and to see that their duties are properly performed;

(c) The Board of Directors of the Association shall adopt a proposed budget for the Association and set the amount of the regular annual assessment against the Lots for each annual assessment period. Within 30 days after adoption of the proposed budget, the Board of Directors shall provide to all Owners a summary of the proposed budget and a written notice of the meeting to consider the ratification of the proposed budget, which notice shall include a statement that the proposed budget may be ratified without a quorum. The written notice of the meeting of Members to consider ratification of the proposed budget shall be provided at least 10 days and not more than 60 days in advance of such meeting. Unless otherwise provided in the Planned Community Act, there shall be no requirement that a quorum be present at such meeting to consider ratification of the proposed budget. If the proposed budget does not increase the annual assessment by more than 20% above the annual assessment in the last ratified budget, the proposed budget shall be ratified unless at that meeting the Owners of 80% of all Lots reject the proposed budget. If the proposed budget increases the annual assessment by more than 20% above the annual assessment in the last ratified budget, the proposed budget shall be ratified unless at that meeting the Owners of a majority of all Lots reject the proposed budget. In the event the proposed budget is rejected, the last ratified budget of the Association shall continue until a new proposed budget is ratified. The due dates for assessments shall be established by the Board of Directors;

(d) foreclose the lien against any Lot for which assessments are not paid or to bring an action at law against the Owner personally obligated to pay the same;

(e) issue, or to cause an appropriate officer or agent to issue, upon demand by any person, a certificate setting forth whether or not any assessment has been paid. A reasonable charge may be made by the Board for the issuance of these certificates. If a certificate states an assessment has been paid, such certificate shall be conclusive evidence of such payment and the amount thereof;

(f) pay ad valorem taxes and public assessments levied against the real and personal property owned in fee simple by the Association;

(g) procure and maintain adequate liability and hazard insurance on property owned by the Association, including but not limited to insurance coverages as provided in the Declaration;

(h) cause all officers or employees having fiscal responsibilities to be bonded, as it may deem appropriate or as required by law;

(i) cause the Common Area, recreational facilities and any other improvements thereto to be maintained;

(j) direct and supervise the affairs of the Association and require the Association to fulfill all of its obligations and duties set forth in the Declaration;

(k) appoint Members to the Architectural Committee for such terms as deemed appropriate;

(l) cause the Stormwater Control Measures to be maintained by the Association and cause the associated costs to be paid; and

(l) take such action as may be necessary for the Association to perform its duties and obligations under the Declaration and applicable Laws, including but not limited to the ordinances of the City.

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## ARTICLE IX - OFFICERS

9.1 Officers. The officers of the Association shall consist of a President, who shall at all times be a Member of the Board of Directors, and a Vice-President, a Secretary, a Treasurer and such Assistant Secretaries, Assistant Treasurers, and such other officers as the Board of Directors may from time to time elect. Any two or more offices may be held by the same person, but no officer may act in more than one capacity where the action of two or more officers is required.

9.2 Election, Term and Qualification. The officers shall be elected by the Board of Directors at the first meeting of the Board of Directors following each annual meeting of the Members, and each officer shall hold office for one (1) year unless he shall sooner die, resign, be removed, or his successor is elected or he or she otherwise shall be disqualified to serve.

9.3 Resignation and Removal. Any officer or Member of the Board may be removed by the Board, with or without cause, whenever in its judgment the best interests of the Association will be served thereby. Any officer may resign at any time by giving written notice to the Board, the President or the Secretary. Such resignation shall take effect on the date of 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.

9.4 Bonds. The Board of Directors may require an officer, agent, or employee of the Association to give bond to the Association, with sufficient sureties, conditioned on the faithful performance of the duties of his respective office or position, and to comply with such other conditions as may from time to time be required by the Board of Directors.

9.5 President. The President shall be the principal executive officer of the Association and, subject to the control of the Board of Directors, shall in general supervise and control all of the business and affairs of the Association. He shall, when present, preside at all meetings of the Board of Directors and Members. He shall sign, with the Secretary, an Assistant Secretary, or any other proper officer, any deeds, leases, mortgages, promissory notes, bonds, contracts, or other instruments which the Board of Directors has authorized to be executed, except in cases where the signing and execution thereof shall be delegated by the Board of Directors or these By-Laws to some other officer or agent of the Association, or shall be required by law to be otherwise signed or executed; and in general he shall perform all duties incident to the office of President and such other duties as may be prescribed by the Board of Directors from time to time.

9.6 Vice-President. In the absence of the President or in the event of his death, inability or refusal to act, the Vice-President shall perform the duties of the President, and when so acting shall have all powers of and be subject to all the restrictions upon the President. The Vice-President shall perform duties as from time to time may be assigned to him by the President or Board of Directors.

9.7 Secretary. The Secretary shall: (a) keep the minutes of the meetings of Members, of Board of Directors and of all Committees in one or more books provided for that purpose; (b) see that all notices are duly given in accordance with the provisions of these By-Laws or as required by law; (c) be custodian of the Association records and of the seal of the Association and see that the seal of the Association is affixed to all documents the execution of which on behalf of the Association under its seal is duly authorized; (d) keep a register of the post office address of each Member which shall be furnished to the Secretary by such Member; (e) keep or cause to be kept a record of the Association's Members, giving names and addresses of all Members and the number of votes held by each. and prepare or cause to be prepared voting lists prior to each meeting of Members as required by law; and (f) in general perform all duties incident to the office of Secretary and such other duties as from time to time my be assigned to him by the President or by the Board of Directors.

9.8 Assistant Secretaries. In the absence of the Secretary or in the event of his death, inability or refusal to act, the Assistant Secretary, unless otherwise determined by the Board of Directors, shall perform the duties of the Secretary, and when so acting shall have all the powers of and be subject to all the restrictions upon the Secretary. They shall perform such other duties as may be assigned to them by the Secretary, by the President, or by the Board of Directors.

9.9 Treasurer. The Treasurer shall (a) have charge and custody of and be responsible for all funds and securities of the Association; receive and give receipts for moneys due and payable to the Association from any source whatsoever, and deposit all such moneys in the name of the Association in such depositories as shall be selected; (b) prepare, or cause to be prepared, a true statement of the Association assets and liabilities as if the close of each fiscal year; (c) shall cause an annual audit of the Association books to be made by an independent certified public accountant at the completion of each fiscal year; (d) issue, at the direction of the Board of Directors, certificates as to whether assessments on a specified Lot have been paid; and (e) in general perform all of the duties incident to the office of treasurer and such other duties as from time to time may be assigned to him by the President or by the Board of Directors, or by these By-Laws.

9.10 Vacancies. A vacancy in any office may be filled by appointment by the Board. The officer appointed to such vacancy shall serve for the remainder of the term of the officer he replaces.

9.11 Officers to Certify Amendments. The President or Vice President and the Secretary or Assistant Secretary may prepare, execute, certify and record amendments to the Declaration on behalf of the Association.

## ARTICLE X - MEMBERSHIP REGISTER

10.1 For the purposes of determining Members of the Association entitled to notice of or to vote at any meeting of Members or any adjournment thereof, or in order to make a determination of Members for any other proper purpose, the Board of Directors may provide that the membership register shall be closed for a stated period but not to exceed, in any case, fifty (50) days and, in case of a meeting of Members, not less than ten (10) days immediately proceeding the date on which the particular action, requiring such determination of Members is to be taken.

10.2 In lieu of closing the membership register, the Board of Directors may fix in advance a date as the record date for any such determination of Members, such record date in any case to be not more than fifty (50) days and, in case of a meeting of Members, not less than ten (10) days immediately preceding the date on which the particular action, requiring such determination of Members is to be taken.

10.3 If the membership register is not closed and no record date is fixed for the determination of Members entitled to notice of or to vote at a meeting of Members, the date on which notice of the meeting is mailed shall be the record date for such determination of Members.

10.4 When a determination of Members entitled to vote at any meeting of Members has been made as provided in this section, such determination shall apply to any adjournment thereof except where the determination has been made through the closing of the membership register and the stated period of closing has expired.

## ARTICLE XI-ARBITRATION

Excluding claims for injunctive relief and to the fullest extent permitted by applicable law, all claims which shall be made against one or more members of the Board of Directors shall be settled by final and binding arbitration except as otherwise provided herein, in the Declaration or under any applicable law, and judgment upon the award may be entered in any court having jurisdiction thereof. Such arbitration shall be commenced upon the delivery of such claim, in writing, to one or more members of the Board; and shall be before one disinterested arbitrator if one can be agreed upon, otherwise before three disinterested arbitrators, one named by the director(s), one by the Owner(s), and one by the two thus chosen. The arbitrator or arbitrators shall determine the controversy in accordance with the laws of North Carolina as applied to the facts found by him or them. If the Director(s) or the Owner(s) shall refuse or fail to so name an arbitrator within thirty (30) day after written notice from the other party requiring the naming of an arbitrator, then the arbitrator so named by the party not in default hereunder shall have the power to proceed to arbitrate and determine the matters in controversy as if he or she were an arbitrator appointed by both parties for that purpose and his or her award in writing signed by him or her shall be final. The rules of procedure for the arbitration hearing may be adopted by the Arbitrators. All arbitration proceedings hereunder shall be conducted in Wake County, North Carolina and shall be concluded within one hundred eight (180) days of the filing of the arbitration demand.

## ARTICLE XII - GENERAL PROVISIONS

12.1 Books and Records. The books, records and papers of the Association shall at all times, during reasonable business hours be subject to inspection by any Member, his agent or attorney. The Declaration, the Articles of Incorporation and the By-Laws of the Association and the financial statements for the Association for the immediately preceding fiscal year shall be available for inspection by any Member and any first mortgage holders, their insurer or guarantors, at the principal office of the Association, where copies may be purchased at a reasonable cost.

12.2 Committees. The Board shall appoint a Nominating Committee as provided in these Bylaws. In addition, the Board of Directors shall appoint other committees as deemed appropriate in carrying out the purposes of the Association.

12.3 Assessments. As more fully provided in the Declaration, each Member is obligated to pay to the Association annual and special assessments which are secured by a continuing lien upon the Lot against which the assessment is made. Any assessment which is not paid within thirty (30) days after the due date shall be delinquent. The Association shall have the option to declare the outstanding balance of any assessment due and payable if any installment thereof shall become delinquent as defined herein. If an assessment is not paid within thirty (30) days after its due date, the assessment shall bear interest from its due date at the rate of twelve percent (12%) per annum, or such other rate as established by the Association as provided in the Planned Community Act, but in no event shall such interest exceed the highest rate allowed by law, and shall be subject to late fees as approved by the Board of Directors and permitted by law. The Association may bring an action at law against the Owner personally obligated to pay the same and/or foreclose the lien against such Owner's Lot provided under the Declaration. To the extent permitted or required by the Planned Community Act, interest, late fees, costs and reasonable attorney fees of any such action shall be added to the amount of such assessment. Each such Owner, by acceptance of a deed to a Lot expressly grants to the Association, its agents or assigns, the right and power to bring all actions against such Owner personally liable for the collection of such charges as a debt and to enforce the aforesaid lien by all methods available for the enforcement of such liens, including foreclosure by an action brought in the name of the Association in a like manner as a Mortgage or a deed of trust lien on real property and such Owner hereby expressly grants to the Association a power of sale in connection with foreclosure of said lien. Such lien shall be in favor of the Association, which shall have the power to purchase the Lot subject to the lien at foreclosure and to acquire and hold, lease, mortgage and convey the same. No Owner may waive or otherwise escape liability for assessments provided for herein by non-use of the Common Area, including without limitation the Amenities, or by abandonment of his Lot. The lien of the assessments provided for herein shall be subordinate to the lien of any first Mortgage on a Lot. Mortgagees are not required to collect assessments and nothing in these Bylaws shall require that failure to pay assessments shall constitute a default under a Mortgage insured by the U.S. Department of Housing and Urban Development, the U.S. Department of Veterans Affairs or by any other governmental mortgage insurance program, such as those by the Federal Home Loan Mortgage Corporation, the Government National Mortgage Corporation or the Federal National Mortgage Association.

12.4 Delegation of Powers. The Board of Directors and the officers may delegate to other persons or a management agent the powers to collect assessments, fines, late fees, interest and other charges provided by the Governing Documents; to maintain bank accounts in the name of the Association and to deposit all funds of the Association into such bank accounts; to hire and discharge other agents and independent contractors; to supervise the use, maintenance, repair, replacement and modification of the Common Areas; to pay from the funds of the Association, the expenses and liabilities of the Association, including but not limited to compensation and reimbursements to such person or management agent; and to prepare statements of Common Expenses and statements concerning the status of paid and unpaid assessments.

12.5 Seal. The seal of the Association shall consist of two concentric circles between which is the name of the Association and the year of incorporation and in the center of which is inscribed "SEAL".

12.6 Waiver of Notice. Whenever any notice is required to be given to any Member or Director by law, by Declaration, or by these By-Laws, a wavier thereof in writing signed by the person or persons entitled to such notice whether before or after the time stated therein, shall be equivalent to the giving of such notice.

12.7 Fiscal Year. The fiscal year of the Association shall begin on the first day of January and end on the 31st day of December of every year, except that the first fiscal year shall begin on the date of incorporation.

12.8 Form of Waiver of Notice. The following form of waiver of notice shall be deemed sufficient, but any other form may be used which is sufficient in law:

POINTE VIEW TOWNS OWNERS ASSOCIATION, INC.

We the undersigned (Board or Association Members) of Pointe View Towns Owners Association, Inc. do hereby severally waive notice of the time, place, and purpose of (the annual or special) meeting of the (Board or Association members) of the said association, and consent that same be held at ______________________ on the ____day of ___________, _____ at _____ o'clock __.M., and we do further consent to the transaction of any and all business of any nature that may come before the meeting.

Dated this ______ day of _____________, 20_____.

_________________________
_________________________
_________________________

12.9 Amendments. Unless a higher percentage is required for certain amendments by applicable law, the Declaration or the Bylaws, the Bylaws may be amended by the affirmative vote or written ballot (as provided by law) of Members entitled to cast in the aggregate at least a 51% of the votes of the Association. Unless otherwise provided by the amendment, or as otherwise may be provided by applicable law, any amendment of the Bylaws shall be effective when approved in accordance with this Article. Unless then required by applicable law, such amendment need not be set forth in an amendment to the Declaration duly recorded in the Office of the Register of Deeds in Wake County, North Carolina, in order to be effective.

12.10 Conflicts. In the case of any conflict between the Articles of Incorporation of the Association and these By-Laws, the Articles shall control; and in the case of any conflict between the Declaration and these By-Laws or the Articles of Incorporation of the Association, the Declaration shall control.

12.11 Compliance with Statutes. These Bylaws are set forth subject to the requirements of Chapter 47F (the Planned Community Act) and Chapter 55A (the NonProfit Corporation Act) of the North Carolina General Statutes, as amended, replaced and recodified from time to time. In the event these Bylaws conflict with the provisions of said statutes, it is hereby acknowledged and agreed that the provisions of such statutes will control.

12.12 Liability and Indemnification. The Directors, officers and members of any Committee of the Association shall not be liable to the Owners or the Association for any mistake of judgment, negligence or otherwise except for their own individual willful misconduct, gross negligence, fraud or bad faith. The Association shall defend, indemnify and hold harmless each Director and officer against all contractual liability to others arising out of contracts made on behalf of the Association unless any such contracts shall have been made in bad faith or contrary to the provisions of the Declaration or these Bylaws. The Association shall defend, indemnify and hold harmless the Directors, officers and members of any Committee of the Association from and against all common law or tort suits for all covered claims as identified in the first sentence of this Section 12.12. It is intended that the Directors and officers of the Association shall have no personal liability with respect to any contract made by them on behalf of the Association, except to the extent of any liability as Owners.

The indemnification and hold harmless rights provided herein shall not be deemed exclusive of any other rights to which those indemnified may be entitled under these Governing Documents or any statute, bylaw, agreement, vote by Members or disinterested Directors or otherwise, both as to action in his or her official capacity and as to action in another capacity while holding such office, and shall continue as to a person who has ceased to be a director, officer or committee member and shall inure to the benefit of the heirs, executors and administrators of such a person.

The Association may purchase and maintain insurance on behalf of any person who is or was a director, officer, committee member, employee or agent of the Association, or is or was serving at the request of the Association as a director, officer, committee member, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against any liability asserted against him or her and incurred by him or her in such capacity, or arising out of his or her status as such, whether or not the Association would have the power to indemnify him or her against such liability.

The Association's indemnity of any person who is or was a director, officer, committee member, employee or agent of the Association, or is or was serving at the request of the Association, as a director, committee member, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, shall be reduced by any amounts such person may collect as indemnification (i) under any policy of insurance purchased and maintained on his or her behalf by the Association, or (ii) from such other corporation, partnership, joint venture, trust or other enterprise.

Nothing contained in this Section, or elsewhere in these Bylaws, shall operate to indemnify any director or officer if such indemnification is for any reason contrary to any applicable law.

Adopted August, 2004

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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 NORTH CAROLINA

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

**North Carolina – Wake County**

The foregoing certificate___ of Roderick W O'Donoghue Jr.

__________ 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: Veronica S Gearon

Assistant/Deputy Register of Deeds DEPUTY

**This Customer Group**

__________ # of Time Stamps Needed

**This Document**

__________ New Time Stamp

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