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WAKE COUNTY, NC 1081
LAURA M RIDDICK
REGISTER OF DEEDS
PRESENTED & RECORDED ON
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**DECLARATION
OF
COVENANTS, CONDITIONS
AND RESTRICTIONS
FOR
HIGHLAND VILLAGE
PLANNED COMMUNITY**

Prepared by and return to:
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THIS DECLARATION (the "Declaration") FOR HIGHLAND VILLAGE PLANNED COMMUNITY (the "Community") is made effective as of the 27th day of July, 2004, by Community developer **DHIC, INC.**, a North Carolina non-profit corporation ("**Declarant**") together with the following ancillary fee simple property owners: **Highland Seniors Limited Partnership**, a North Carolina limited partnership; **Highland Village Limited Partnership**, a North Carolina limited partnership, and **Highland Manor Apartments, Inc.**, a North Carolina non-profit corporation,

RECITALS:

A. Declarant is the developer of certain real property located in or near the Town of Cary, Wake County, North Carolina, as more particularly described on Exhibit A attached hereto and hereby incorporated by reference (the "**Property**").

B. Declarant is the owner of the Property together with (i) Highland Seniors Limited Partnership, (ii) Highland Village Limited Partnership, and (iii) Highland Manor Apartments, Inc. (said owner entities i, ii, and iii collectively hereinafter referred to as the "**Ancillary Owners**").

C. Pursuant to the North Carolina Planned Community Act (as defined in subsection 1.1), Declarant and the Ancillary Owners desire to create an affordable residential community on the Property consisting of (i) two apartment complexes for senior citizens; (ii) one family apartment complex; (iii) townhouse and condominium units to be marketed for single family ownership *together with* (iv) certain common amenities and facilities which Declarant in its sole discretion as developer may construct or cause to be constructed on the Property.

NOW, THEREFORE, Declarant and the Ancillary Owners as the fee simple owners of the Property for themselves and for their respective successors and assigns declare as follows:

ARTICLE I

DEFINITIONS

1.1 Act. The North Carolina Planned Community Act codified in Chapter 47F of the North Carolina General Statutes, as amended, and succession statutes in substitution and replacement thereof; specific statutory citations references are for convenience only and as such statutory citations exist on the date hereof.

1.2 Apartment. A building, structure or complex of buildings or structures containing multiple independent housekeeping suites or dwelling units leased to individual households and not intended for separate fee simple ownership and which are owned, managed and operated as a business enterprise. Apartments within the Community shall consist of three separate projects: (i) sixty-eight (68) residential rental units for persons over fifty-five (55) years or older constructed on "Lot 4" of the Community and commonly known as "The Commons at Highland Village"; (ii) thirty-two (32) residential rental units of for persons sixty-two (62) years or older to be commonly known as "Highland Manor," and constructed on "Lot 6" of the Community utilizing "Capital Advance" proceeds under the Section 202 Program of the United States Department of Housing and Urban Development ("**HUD**") and (iii) a fifty (50) unit family apartment complex to be constructed on "Lot 5" of the Community and commonly known as "Highland Village Apartments."

1.3 Apartment Lot. A Lot within the Community and subject to this Declaration upon

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which may be or will be constructed an Apartment including Lots 4, 5 and 6 as shown on the Plat; Unless otherwise specified, every reference herein to "lot" shall be deemed to include an "Apartment Lot" (see also "Exempt Apartment Lot" defined in subsection 1.25).

1.4 Apartment Dwelling Unit. A portion of an Apartment constituting an independent housekeeping suite containing sleeping, bathroom and kitchen facilities subject to one leasehold estate and intended for the occupation of one household.

1.5 Articles. The articles of incorporation of the Community Association together with all subsequent amendments and modification thereto filed in the office of the North Carolina Secretary of State.

1.6 Authority. The Town of Cary or any other governmental entity having jurisdiction over the Community.

1.7 Bio-Retention Areas. The three drainage and filtration areas handling and controlling stormwater runoff within the Community, which areas shall be deemed Common Elements regardless of their location within the Community including their existence within the boundaries of any Owner's Lot.

1.8 Bylaws. The bylaws of the Community Association as they now or hereafter exist.

1.9 Common Elements. Any real property or any fixtures, facilities, or improvement within the Community owned, acquired or leased by the Community Association (or otherwise designated by the Executive Board to be maintained by the Community Association for the benefit of the Community and its Members in accordance with the terms of this Declaration or any Supplementary Declaration) and dedicated to the common use, benefit and/or enjoyment of the Owners including without limitation (i) Private Streets, paths, alleys; (ii) parking areas and parking spaces; (iii) Common Facilities Lot (as defined in subsection 1.11) and improvements and other appurtenances thereto; (iv) Community playgrounds, open space, Community building and recreational facilities, if any, (v) Community entrance area (and the median and gazebo appurtenant hereto) and (vi) the Bio-Retention Areas.

1.10 Common Facilities Lot. All or a portion of Lot 3 as shown on the Plat, the fee simple title to which real property or any improvements located thereon may be conveyed jointly or severally to one or more of the Ancillary Owners (or affiliates thereof) and leased to the Community Association as Common Elements.

1.11 Common Expenses. Expenditures made by or financial liabilities of the Community Association together with any allocation to reserves.

1.12 Common Expense Liability. Except as otherwise specified herein, the liability for Common Expenses allocated to each Lot and Condominium Unit permitted the Declaration, the Act or otherwise by law.

1.13 Community. The real property hereby or hereinafter subject to this Declaration and the jurisdiction of the Community Association and henceforth to be collectively known and advertised as "Highland Village."

1.14 Community Association. Highland Village Property Owner's Community Association, Inc., a North Carolina nonprofit corporation, its successors and assigns; subject to the Special Declarant Rights, the Community Association shall have all powers set forth in section 47F-3-102 of the Act or as otherwise legally set forth in the Community Documents.

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1.15 Community Documents. Collectively, this Declaration (together with any Supplemental Declaration or amendment duly legally adopted and executed and filed in the County Registry), the Articles, Bylaws and Rules and Regulations (as respectively defined in subsections 1.5, 1.94 and 1.38).

1.16 Community Property. Collectively, the Common Elements and any personal property now or hereafter leased or acquired by the Community Association for the common use and enjoyment of the Owners including without limitation street lighting fixtures located throughout the Community ~~any~~ not otherwise owned by any Authority (as defined in subsection 1.6). *and*

1.17 Condominium Association. Highland Village Condominium Association, Inc., a North Carolina nonprofit corporation, (together with its successors and assigns, if any) formed to oversee the management and maintenance of the any common elements of "Highland Village Condominiums" (the "Condominium") located within the Community; to the extent allowable by the North Carolina Condominium Act (as defined in subsection 1.19) and if set forth in the "Declaration of Condominium," the Condominium Association may delegate its duties and responsibilities to the Community Association or its manager

1.18 Condominium Lot. Any Lot within the Community upon which may be or will be constructed Condominium Units (including "Lot 2" as shown on the Plat).

1.19 Condominium Unit. Any portion of a Condominium Lot designated for separate unit ownership as defined, created and governed by the North Carolina Condominium Act codified in Chapter 47C of the North Carolina General Statutes (the "North Carolina Condominium Act") and to be marketed individually (together with a specified undivided interest in and to the Condominium common elements appurtenant thereto) for single family ownership.

1.20 County Registry. The records of the Office of the Wake County Register of Deeds.

1.21 Declarant. DHIC, Inc., a non-profit corporation and the developer of the Community, or any Person (as defined in subsection 1.34) to whom Declarant has assigned its Special Declarant Rights pursuant to a written instrument duly recorded in the County Registry together with any agent or agents appointed by the Declarant to act on its behalf for the purpose of administering or enforcing, in whole or in part, the rights reserved it Declarant in the Community Documents, the Act or otherwise by law.

1.22 Declarant Control Period. The period commencing on the date hereof and continuing until the earlier of: (i) six (6) months following the Declarant's or Declarant's successor in interest builder/contractor's conveyance in fee simple of the last Single Family Unit to a Single Family Occupant Household (as defined in subsection 1.33), or (ii) three (3) months following the date Declarant surrenders its to appoint and remove directors and officers of the Community Association by an express amendment to this Declaration executed and filed in the County Registry. *and*

1.23 Eligible Mortgagee. The United States Department of Housing and Urban Development (under its Section 202 Program) or an institutional lender holding a first mortgage or deed of trust encumbering a Lot or Condominium Unit. When any right is to be given to an Eligible Mortgagee, such right shall also be given to ~~the~~ Federal Home Loan Mortgage Corporation, the Federal National Mortgage Community Association, the Veterans Administration, the Federal Housing Administration, the Farmers Home Administration, the Government National Mortgage Community Association and any other public or private secondary mortgage market entity participation in purchasing or guaranteeing such mortgages.

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1.24 Executive Board or "Board". The body designated to act on behalf of the Community Association in accordance with the terms of the Community Documents and the definition of "Executive Board" as set forth in Section 47F-1-103(13) of the Act (sometimes also referred to herein as the "Board").

1.25 Exempt Apartment Lot. Any Apartment Lot (including "Lot 6" as shown on the Plat) owned by a non-profit corporation (the "**Exempt Lot Owner**") which improvements thereon were constructed utilizing proceeds under HUD's "Section 202 Program" (the "**Capital Advance**") , which program's terms and regulations require that such lot be exempt from Common Expense Liability; if permissible by HUD regulations or otherwise by law, upon cancellation of the HUD deed of trust encumbering the subject lot and securing an Exempt Lot Owner's receipt of the Capital Advance, such lot will no longer be deemed exempt from Common Expense Liability.

1.26 Improvement. For the purposes of Article IX Improvements shall mean and refer to all (i) buildings, (ii) outbuildings, (iii) storage sheds or areas, (iv) roofed structures, (v) parking areas, (vi) loading areas, (vii) fences, (viii) walls, (ix) hedges, (x) mass plantings of trees and shrubs, (xi) non-natural yard ornamentation; (xii) recreational and playground equipment; (xiii) poles, (xiv) driveways, (xv) changes in grade or slope, (xvi) lot preparation, and (xvii) exterior construction or exterior improvements exceeding \$500.00 in cost not included in any of the foregoing, but expressly excluding garden shrub or tree replacements or any other replacement or repair of any magnitude which ordinarily would be expended in accounting practice and which does not change exterior colors or exterior appearances, but does include both original Improvements and all later changes to such Improvements. When the word "improvement" appears in this document without capitalization it shall have that meaning attributed to such word under state property law.

1.27 Lot. Any separately numbered lot or parcel of Community land (*regardless of size but exclusive of Common Elements*) shown on an approved subdivision plat of the Community duly recorded in the County Registry including the Plat (as defined in subsection 1.35) including the Apartment, Townhouse and Condominium Lots and the Common Facilities Lot (as such differing "Lot types" are defined in this Article I).

1.28 Limited Common Element. A portion of the Common Elements allocated by the Declaration or by operation of law for the exclusive use of one or more but fewer than all the Owners including any mailbox facility serving any particular Townhouse Unit or Residential Condominium Unit.

1.29 Member. All Owners who are members of the Community Association as defined in subsection 3.1 hereof.

1.30 Mortgage. Any mortgage, deed of trust, and any and all other similar instruments recorded in the County Registry for the purpose of encumbering real property as security for the payment or satisfaction of an obligation.

1.31 Mortgagee. The holder of a Mortgage.

1.32 Occupant. Subject to the provisions of Article 15, any Person or Persons inclusive of Owners and their respective family members, allowable tenants and permitted guests in possession of any portion of a Lot (including a Condominium Unit or Apartment Dwelling Unit) for any period of time

1.33 Owner. The record owner, whether one or more Persons, of fee simple title to any Lot or Condominium Unit including contract sellers, but excluding (i) any Person holding such interest merely as

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security for the performance or satisfaction of any obligation, and (ii) any lessee or tenant of an Owner; Owners of Single Family Units purchased as their primary residence are sometimes also referred to herein as "Consumer Occupant Household(s)."

1.34 Person. A natural person, a corporation, partnership (general or limited), limited liability company, registered limited liability partnership, association, trust or other legal entity or any combination thereof.

1.35 Plat. The Community subdivision plat in effect on the date hereof recorded in Book of Maps 2002, Page 2030 of the County Registry (or any re-recording in substitution thereof); references to specific numbered lots within this instrument shall be as shown on the Plat.

1.36 Private Street. One or more streets or rights of way for vehicular and pedestrian traffic within the Community not dedicated to the public and maintained by the Community Association pursuant to the terms of this Declaration and any applicable ordinances or regulations of the Authority (as defined in subsection 1.6) regardless of whether or not any such street or a portion thereof lies within the boundary of a Lot; the Private Streets are currently and commonly known as (i) Highland Village Drive; (ii) Duncan Vale Drive; (iii) Highland Commons Court; (iv) Malcolm Valley Place; (v) Winfred Dell Lane and (vi) Highland Manor Place and (v) that portion of Matheson Place located on Lot 1 and Lot 3 as shown on the Plat.

1.37 Reasonable Attorney Fees. Attorney fees reasonably incurred without regard to any limitations on attorneys' fees pursuant to subsection 47F-1-103(26) of the Act.

1.38 Rules and Regulations. Those written actions of the Executive Board, duly adopted, and any amendments thereto consistent with the Declaration and Bylaws, the purpose of which is (i) to interpret and apply the provisions of this Declaration and the Bylaws and (ii) to establish and prescribe the administration and management of the Community as well as the use, operation, and management of the Common Elements and the improvements, facilities and parking areas and spaces located thereon.

1.39 Single Family Units. The Condominium and Townhouse Units which Developer will market for sale to Consumer Occupant Households (as defined in subsection 1.33)

1.40 Special Declarant Rights. The rights reserved to Declarant during the Declarant Control Period including, without limitation, any right to (i) complete improvements indicated on plats and plans on file with the Declarant; (ii) exercise any development rights pursuant to the Act or the Declaration; (iii) to maintain sales offices and construction models, management offices, and signs and other graphics advertising and marketing the Community; (iv) use easements through the Common Elements for the purpose of making improvements within the Community; (v) make the Community part of a larger planned community or group of planned communities, or (vi) appoint or remove any officer or Community Association Board member.

1.41 Supplementary Declaration. An amendment or supplement to this Declaration duly recorded in the County Registry and subjecting additional real property to this Declaration or imposing, expressly or by reference, additional restrictions and obligations on the Property.

1.42 Total Association Vote. All votes attributable to Members (including votes of Declarant) together with the consent of Declarant during the Declarant Control Period.

1.43 Townhouse. A row of individual building units connected by common side walls (each

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individual building unit being hereinafter referred to as a "Townhouse Unit" as defined in subsection 1.45; each Townhouse Unit (albeit connected) shall be constructed on a separate Townhouse Lot. Each wall initially constructed on the dividing line between the Lots (and all reconstruction or extensions of such walls) shall constitute a "party wall," and to the extent not inconsistent with the provisions of the Declaration or the Act, the general rules of law regarding party walls, lateral support, in below-ground construction and of liability for property damage due to negligence or willful acts or omission shall apply thereto.

1.44 **Townhouse Lot.** A Lot within the Community and subject to this Declaration upon is or will be constructed a Townhouse Unit as such lots may be subdivided out of "Lot 1" as shown on the Plat. Unless otherwise specified, every reference herein to "lot" shall be deemed to include a "Townhouse Lot."

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1.45 **Townhouse Unit.** That portion of a Townhouse constructed on a Townhouse Lot albeit connected to another such unit by a party wall and to be marketed individually (together with the Townhouse Lot appurtenant thereto) for single family ownership. The exterior of each Townhouse Unit shall be maintained by the Community Association pursuant respectively to subsections 5.3.1 and 7.2.

ARTICLE II

PROPERTY SUBJECT TO THIS DECLARATION

2.1 **Property Hereby Subjected To This Declaration.** The Property (as defined in Recital A) shall be held, transferred, sold, conveyed, used, occupied, and mortgaged or otherwise encumbered, subject to the covenants, restrictions, and benefits and conditions of this Declaration.

2.2 **Declarant Conveyance of Community Property.** The Declarant or any Ancillary Owners (as defined in Recital B above) may transfer or convey any personal property and any improved or unimproved real property, leasehold, easement, or other property interest to the Community Association. The Community Association shall accept such conveyance and thereafter the transferred property shall be Community Property maintained by the Community Association for the benefit of the Members. Declarant, however, shall not be required to make any improvements whatsoever to the property conveyed and accepted pursuant to this subsection 2.2.

ARTICLE III

COMMUNITY ASSOCIATION MEMBERSHIP, VOTING RIGHTS COMMUNITY ASSOCIATION MANAGEMENT AND DECLARANT CONTROL

3.1 **Membership.** Every Person holding record fee simple title to a Condominium Unit or Lot (with the exception of the record owner of the Common Facilities Lot) shall be deemed a Member of the Community Association; ownership of a Lot or Condominium Unit shall be the sole qualification for such membership.

3.2 **Voting.** The Community Association shall consist of four (4) classes of voting membership for the sole purpose of computing voting rights, and except as otherwise specifically set forth in this Declaration, and Members within each such membership category shall not vote as a class.

3.2.1 **Class "A" Membership.** Class "A" Membership shall be composed of all Owners of Townhouse Lots, with the exception of the Declarant prior to termination of the Declarant

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Control Period; each Class A Owner shall be entitled to one (1) vote for each Lot owned.

3.2.2 Class "B" Membership. Class "B" Membership shall be composed of all Owners of Condominium Units with the exception of the Declarant prior to termination of the Declarant Control Period; each Class B Owner shall be entitled to one (1) vote for each Condominium Unit owned.

3.2.3 Class "C" Membership. Class "C" Membership shall be composed of all Owners of Apartment Lots (including the Owner of the Exempt Apartment Lot) with the exception of the Declarant prior to termination of the Declarant Control Period; Each Class C Owner shall be entitled to one (1) vote for each Apartment Dwelling Unit within the each Apartment building appurtenant to such Apartment Lot.

3.2.4 Class "D" Membership. During the Declarant Control Period, Class "D" Membership shall be composed solely of the Declarant whose voting rights shall be equal to a total of three (3) votes for each vote held by all Class "A" Class "B" and Class "C" Owners. The Class "D" membership shall cease upon the end of the Declarant Control Period.

3.2.5 Voting for Multiple Owners. Pursuant to section 47F-3-110 of the Act, if only one of any multiple Owners of any Lot or Condominium Unit is present at a Community Association meeting, that Owner shall be entitled to cast all the votes allocated to such lot or unit. If more than one of the multiple owners is in attendance, the votes allocated to such lot or unit may be cast only in accordance with the agreement of the majority of such multiple owners; such majority agreement shall be conclusively presumed if any one of the multiple owners cast the allocated votes without protest being made promptly to the person presiding over the meeting by any of the other multiple owners.

3.2.6 Majority Vote. Except as otherwise provided in the Community Documents or the Act and provided all applicable quorum requirements are met, any Community Association action requiring Member approval shall require the vote or written assent of a majority of the Total Association Vote.

3.2.7 Proxies. Proxy votes shall be permitted at any regular or special meeting of the Community Association in accordance with the provision of section 47F-3-110 of the Act.

3.2.8 Quorum Reductions. Pursuant to subsection 47F-3-109(c) of the Act, in the event any business cannot be conducted at any Community Association meeting because a quorum of the Members is not present, that meeting may be adjourned to a later date by the affirmative vote of a majority of those present in person or by proxy. Notwithstanding any provision to the contrary in the Declaration or the Bylaws, the quorum requirement at the next such meeting shall be fifty percent (50%) of the quorum requirement applicable to the meeting adjourned for lack of a quorum. This provision shall continue to reduce the quorum by fifty percent (50%) from that required at the previous meeting, as previously reduced, until such time as a quorum is present and business can be conducted.

3.2.9 Suspension of Voting Rights. The right of any Member to vote may be suspended by the Executive Board pursuant to subsection 4.2.4.

3.3 Declarant Control. Pursuant to its Special Declarant Rights, Declarant hereby retains the right to appoint and remove any member or officers of the Executive Board until the end of the Declarant Control Period.

3.4 Professional Management of the Community Association. In Declarant's discretion during the Declarant Control Period and thereafter by the Executive Board pursuant to majority vote, the

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Community Association may delegate its management obligations to a professional management organization. Any professional management contract shall be reasonable as to term, compensation and termination. In accordance with section 47F-3-105 of the Act, during the Declarant Control Period all contracts with any professional management organization shall include a right of termination at any time after the end of the Declarant Control Period without cause or penalty upon ninety (90) days advance notice.

ARTICLE IV

PROPERTY RIGHTS IN THE COMMON PROPERTIES

4.1 **Members' Easements of Enjoyment in Common Elements.** Every Member shall have easement of ingress and egress together with a right of "use and enjoyment" in and to the Common Elements (exclusive of Limited Common Elements not appurtenant to such member's Lot or Condominium Unit) and facilities located thereon including without limitation (as such may be constructed, developed or exist in Declarant's sole discretion) (i) Private Streets, (ii) Community entrance area and median and gazebo appurtenant thereto; (iii) the "Community Building," and (iv) Community playgrounds and recreational facilities. Such easement shall be appurtenant to and shall pass with the title to each Member's Lot or Condominium Unit. Subject to the terms of the Community Documents (including the Rules and Regulations and any fees set forth therein), any Member may delegate such easements and "rights of use and enjoyment" to family members guests and invitees.

4.2 **Extent of Members' Easements.** The rights and easements of enjoyment created hereby shall be subject to the following rights and restrictions.

4.2.1 the right of the Community Association to subject all or any portion of the Common Elements to a security interest in accordance with the Bylaws and section 47F-13-112 of the Act; provided, however, such encumbrance shall not be effective unless such lien has been approved by at least eighty percent (80%) of the Total Association Vote (as defined in subsection 1.42). Any security interest given by the Community Association shall be subject and subordinate to any rights, interests, options, easements and privileges herein reserved or established for the benefit of (i) Declarant, (ii) any Member, or (iii) any Eligible Mortgagee. Any provision in any Mortgage given by the Community Association to the contrary notwithstanding, the exercise of any rights therein by the Mortgagee thereof shall not cancel or terminate any rights, easements or privileges reserved or established herein for the benefit of (i) Declarant, (ii) any Member, or (iii) any Eligible Mortgagee. Proceeds of the financing secured in accordance with this subsection 4.2.1 shall be an asset of the Community Association.

4.2.2 the right of the Community Association to take any reasonably necessary steps to protect the properties encumbered (pursuant subsection 4.2.1) against foreclosure.

4.2.3 the right of the Community Association to limit the number of the guests of Owners and Occupants who may use the facilities and improvements located on the Common Elements, and to provide for the exclusive use and enjoyment of specific portions thereof by any Owner, or his Occupants, family, allowable tenants, guests, and invitees at certain designated times or to promulgate other Rules and Regulations in connection with Common Element usage.

4.2.4 the right of the Executive Board (or an adjudicatory panel appointed thereby) pursuant to the mandatory provisions and procedures of section 47F-3-107.1 of the Act to fine any Member or to suspend any Member's voting rights and/or a Member's right to use Community facilities, if any, (i) for any period during which any assessment levied against such Member's Lot or Condominium

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Unit remains unpaid, and (ii) for a reasonable period of time in the case of an infraction of the terms of the Community Documents; provided, however, that the Community Association shall not suspend a Member's right to use any Community easements, roads, rights of way or alleys for ingress, egress and regress to publicly dedicated rights of way subject to the rules, regulations and fees, if any, established by the Community Association for such use. Any such suspension shall not constitute a waiver or discharge of the Member's continuing obligation to pay any assessments.

4.2.5 the right of Declarant or the Community Association to dedicate or transfer, any drainage, utility or access easements, or alleys on any part of the Common Elements to any public utility or Authority.

4.2.6 the right of the Community Association, subject to such conditions as may be agreed to by the Members and the provisions of section 47F-3-112 of the Act, to dedicate, give, convey, sell or lease all or any portion of the Common Elements; no such dedication or conveyance (and the conditions appurtenant thereto) shall be effective unless such conveyance has been approved by at least eighty percent (80%) of the Total Community Association Vote. The proceeds realized from an approved sale or lease of any Common Element shall be an asset of the Community Association. The sale or lease of any personal property owned by the Community Association shall be determined by the Executive Board in its sole and uncontrolled discretion; provided, however, any proceeds derived from an approved transfer shall be an asset of the Community Association.

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ARTICLE V

ASSESSMENTS

5.1 Creation of the Lien and Personal Obligation for Assessments.

5.1.1 Covenant of Payment. Exclusive of the Exempt Apartment Lot and Common Facilities Lot which shall not be subject to the terms of this Article V, each Owner of a Lot or Condominium Unit (whether or not it shall be so expressed in such Owner's deed or other instrument of conveyance), is deemed to covenant and agree to pay to the Community Association (i) annual Assessments or charges, and (ii) special assessments, such annual and special assessments to be fixed, established and collected as respectively herein set forth.

5.1.2 Creation of Lien. Any annual or special assessments levied against Lot or Condominium Unit subject to assessments and remaining unpaid for thirty (30) days or longer from the time such sum is due and payable (i) shall be a lien on that Lot or Condominium Unit (and such Condominium Unit's undivided interest in the common elements appurtenant thereto) and (ii) shall be deemed a continuing lien thereon when a claim of lien is filed of record in the Office of the Wake County Clerk of Superior Court Pursuant to the provisions of section 47F-3-115 of the Act. Each delinquent assessment, together with interest, late charges, and costs, and Reasonable Attorneys' Fees incurred by the Community Association in undertaking collection thereof shall also be the personal obligation of the person or entity who was the Owner or Owners (jointly and severally) of such Lot or Condominium Unit at the time such assessments became due and payable; provided, however, that the personal obligation of an Owner for delinquent assessments shall not pass to his successors in title unless the lien continues to encumber the transferred property interest.

5.1.3 Release of Lien in Connection with a Condominium Unit. Notwithstanding anything herein to the contrary, the payment by any Condominium Unit's payment of the assessment levied against his Unit shall release such Owner's Condominium Unit and his undivided interest in the

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common elements and limited common elements appurtenant thereto from the lien of such assessment and any personal liability in connection therewith regardless of any delinquency in assessments by Owners of other Condominium Units created from the Condominium Lot out of which his Unit was created have paid their respective assessments

5.3 Purpose of Annual Assessments. The annual assessments levied by the Community Association in accordance with the terms of this Article shall be used exclusively for (i) the improvement, maintenance, enhancement, enlargement and operation of the Common Elements including without limitation the Private Streets, community playgrounds (if any) and recreational and clubhouse facilities (if any), entrance area (and the median and gazebo appurtenant thereto, if any), and all Bio-Retention Areas regardless of their location within the Community; (ii) the provision of services which the Community Association is authorized to provide; and (iii) for payment of the permissible or required expenses of the Community Association, including without limitation, the procurement and maintenance of liability and hazard insurance in accordance with Article VI of this Declaration and section 47F-3-113 of the Act; provided, however, that any Common Elements including parking areas appurtenant to a Condominium Lot shall be maintained by the respective Condominium Association unless such association delegates such responsibilities to the Community Association in accordance with the terms of the Declaration of Condominium.

5.3 Classes of Annual Assessments.

5.3.1 Class I Assessments. This Assessment class shall consist of all Owners of Townhouse Lots, and the assessments levied within this class shall include (i) an assessment to cover the maintenance of the Community Common Elements allocated on a prorated basis of the Townhouse Unit's proportionate square footage (the "Base Assessment") plus a separate assessment covering the costs and expenses of maintaining the "exterior" of the Townhouse Units pursuant to subsection 7.2 hereof (the "Townhouse Maintenance Assessment").

5.3.2 Class II Assessments. This Assessment class shall consist of all other Owners of Condominium Units and Lots and assessments levied within this class shall consist of a Base Assessment to cover the maintenance of the Community Common Elements allocated on a prorated basis of such unit's proportionate square footage. Pursuant to the terms of the Declaration of Condominium, the Condominium Association (or such association's designated or delegated agent including the Community Association) shall be responsible the maintenance of the Condominium Units and the common elements appurtenant thereto and therefore each Condominium Unit owner shall also be subject any assessment levied through the Condominium Association in addition to the Base Assessment levied by the Community Association.

5.3.3 Class III Assessments. This class shall consist of all Owners (including the Declarant) of Apartment Lots exclusive of any Exempt Apartment Lot; and assessments levied within this class shall consist of a Base Assessment to cover the maintenance of the Community Common Elements allocated on per Apartment Dwelling Unit basis on a prorated basis of such unit's proportionate square footage. Such Apartment Lot Owners (i) shall maintain their building or buildings at their own expense (including the Owner of the Exempt Apartment Lot) and (ii) with the exception of special assessments set forth in subsection 5.10 shall be subject only to a levy for the Base Assessment.

5.4 Adoption and Ratification of Annual Budget.

5.4.1 The Proposed Budget. By majority vote, the Executive Board shall adopt an

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annual budget for the subsequent operational year which shall provide for the allocation of expenses and assessment rates in such manner as the obligations imposed by this Declaration and any and all Supplementary Declarations will be met (the "Annual Budget").

5.4.2 Ratification of Proposed Budget. Pursuant to subsection 47-3-103(c) of the Act within thirty (30) days after adoption of the Annual Budget, the Executive Board shall provide all Members with a summary of such budget, and a notice of a meeting to consider its ratification, including a statement that the Annual Budget may be ratified without the presence of a quorum. The Board shall set a date for such meeting to be held not less than ten (10) days but not more than sixty (60) days after mailing of such summary and notice. There shall be no requirement that a quorum be present at the meeting. The Annual Budget shall be ratified unless a majority of the votes cast at such meeting rejects the Annual Budget. If the proposed Annual Budget is rejected, the Annual Budget last ratified by the Members shall be continued until such time as the Members ratify a subsequent Annual Budget proposed by the Board.

5.5 Special Meeting to Increase Current Annual Assessment. If the Executive Board, by majority vote, determines that the important and essential functions of the Community Association will not be properly funded in any year pursuant to the duly ratified Current Annual Budget by the annual assessment, the Board may call a special meeting of the Members in accordance with the Bylaws requesting approval of a specified increase in annual assessments. The proposed increased assessment shall be levied upon the affirmative vote of sixty-seven percent (67%) of the Total Association Vote. An increase in annual assessments in any year pursuant to this subsection 5.5 shall in no way affect annual assessments for subsequent years.

5.6 Initial Annual Assessments. The initial assessments for the calendar year in which this Declaration is filed in the County Registry, if any, represent that sum covering the projected cost to the Community Association of Common Expenses as set forth in the initial budget prepared by the Declarant ("Initial Assessments"); provided, however, that the Executive Board in its discretion may charge a lesser amount until such time as the Common Elements have been substantially completed.

5.7 Billing of Annual Assessments. The annual assessments may, in the sole discretion of the Executive Board, be billed monthly, quarterly, semiannually or annually, and each such installment billed shall be due and payable thirty (30) days from the date bills are mailed; in the Executive Board's discretion cycles of billing may vary among the various assessment classifications specified in subsection 5.3.

5.8 Date of Commencement of Annual Assessments; Assessment Obligation of Declarant.

5.8.1 Annual assessments as to any Townhouse Lot shall commence on the first day of the month following the Authority's issuance of a Certificate of Occupancy for the Townhouse Unit located on such Lot.

5.8.2 Annual assessments as to any Condominium Unit shall commence on the first day of the month following the Authority's issuance of a Certificate of Occupancy for such Condominium Unit.

5.8.3 Annual assessments as to any Apartment Dwelling Unit (other than one located on an Exempt Apartment Lot) shall commence on the first day of the month following the Authority's issuance of a Certificate of Occupancy for the Apartment building in which such unit is located.

5.9 Common Elements. All Common Elements shall be exempt from all assessments

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created pursuant to this Article V.

5.10 Special Assessments.

5.10.1 Purpose and Payment of Special Assessments. In addition to the annual assessments authorized hereby, the Community Association may levy special assessments, for the following purposes:

(i) Construction or reconstruction, repair or replacement of capital improvements upon the Common Elements and other improvements maintained by the Community Association, including the necessary fixtures and personal property related thereto; and

(ii) Repayment of any loan made to the Community Association to enable it to perform the duties and functions authorized herein.

5.10.2 Approval of and Payment of Special Assessments. A special assessment shall be approved by sixty-seven percent (67%) of the Total Association Vote. The notice of the meeting to consider such assessment shall include one statement (not to exceed five (5) pages in length) from the members of the Board favoring the special assessment, and one statement from those members of the Board opposing the special assessment, if any. Approved special assessments shall be paid in installments as determined by the Board, and the Board may permit special assessments to be paid in installments extending beyond the fiscal year in which the special assessment is imposed. ~~Special assessments, however, relating only to the maintenance of the Townhouse Units shall be voted upon only by members of Class A and during the Declarant Control Period Class D as approved by a sixty-seven percent (67%) vote thereof.~~

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5.10.3 Assessment by Class. The proportion of each special assessment to be paid by the Members of the various classifications of assessable property defined in subsection 5.3 shall be equal to the proportion of the respective annual assessments levied for the assessment year during which such special assessments are approved by the Members; provided, however, that any special assessments relating solely to the maintenance, rehabilitation or restoration of the Townhouse Units shall be borne solely by the Class A members

5.11 Subordination of the Lien to Eligible Mortgages and Ad Valorem Taxes. The lien of the assessments provided for herein shall be subordinate to the lien of any Eligible Mortgage and the lien of ad valorem taxes assessed by any governmental authority having jurisdiction thereof. Sale or transfer of any Owner's property subject to the Assessment shall not affect the assessment lien; provided, however, that the sale or transfer of any Lot or Condominium Unit pursuant to a decree of foreclosure of an Eligible Mortgage (or any proceeding in lieu of foreclosure thereof), shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. Pursuant to section 47F-3-116 of the Act, such unpaid assessment, however, shall be deemed Common Expenses collectible pro rata from all the Owners including such purchaser, its heirs, successors and assigns. No sale or transfer pursuant to this subsection 5.11 shall relieve such Lot or Condominium Unit Owner from liability or liens arising from assessments thereafter becoming due.

5.12 Remedies for Non-Payment of Assessments. Any assessments (as billed on a per installment basis) not paid when due shall be delinquent. Such delinquent assessment not paid within thirty (30) days after the date due shall bear interest from the date of delinquency at a rate equal to eighteen percent (18%) per annum, and the Community Association may levy a late charge not to exceed five percent (5%) of the delinquent assessment. The Community Association may bring an action at law

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against the delinquent Owner or proceed to foreclose the lien created herein pursuant to provisions and procedures set forth in section 47F-3-116 of the Act; provided, however, that this subsection 5.12 does not prohibit other actions to recover the sums created by the lien provided herein or prevent the Community Association from taking a deed in lieu of foreclosure pursuant to section 47F-3-116 (d) of the Act. Costs, late charges, fines, interest and fees (including Reasonable Attorney's Fees) of any such action shall be added to the amount of the delinquent assessment and shall be part of the lien assessed against such Lot or Condominium Unit.

5.13 Reserved Funds. The Community Association shall establish a reserve fund from its annual assessments to be held in an interest bearing account as a reserve for (i) major rehabilitation or major repairs; (ii) emergency and other repairs required as result of storm, fire, natural disaster or other casualty loss for which insurance proceeds are inadequate, and (iii) the initial costs of any new service to be performed by the Community Association (the "Reserve Account"). Any surplus funds remaining with the Community Association as referenced in section 47F-3-114 of the Act shall be allocated to such reserve account.

5.14 Omission of Assessments. The omission by the Executive Board, before the expiration of any fiscal year, to fix the assessments hereunder for that or the next fiscal year shall not be deemed a waiver or modification in any respect of the provisions of this Declaration, or a release of any Owner from the obligation to pay the assessments (or any installment thereof) for that or any subsequent year, but the assessment fixed for the preceding year shall continue until a new assessment is fixed.

5.15 Abandonment and Non-Use. No Owner may waive or otherwise escape liability for any assessments created by this Article V by the non-use of the Common Elements or abandonment of his Lot or Condominium Unit.

5.16 Requests for Statement. Pursuant to section 47F-3-118 of the Act, upon written request, the Community Association shall furnish any Owner or any Owner's authorized agents a statement setting forth the amount of any unpaid assessment and other charges against such Owner's Lot or Condominium Unit. The statement shall be furnished within ten (10) business days after receipt of such request and shall be binding on the Community Association, the Executive Board, and any other Owner. In connection therewith the Community Association shall charge the requesting party a reasonable fee of not less than \$25.00 per statement issued.

ARTICLE VI

INSURANCE AND PROPERTY CASUALTY LOSSES AND DAMAGES

6.1 Mandatory Insurance. In accordance with the provisions of section 47F-3-113 of the Act and commencing not later than the time of the first conveyance of a Lot or Condominium Unit to any Person other than the Declarant, the Community Association shall maintain the following insurance coverage to the extent reasonably available:

6.1.1 Property Insurance on the Community Property. Community Property insurance policies shall insure against all risk of direct physical loss commonly insured against including fire and extended coverage perils. The total amount of insurance (after application of any deductibles) shall be not less than eighty per (80%) of the replacement cost of the insured property at the time such insurance is purchased and at each renewal date thereafter, exclusive of land, excavations, foundations, and other items customarily excluded from such coverage.

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6.1.2 Liability Insurance on Community Association Owned Property. The Community Association liability insurance shall cover all occurrences commonly insured against for death, bodily injury, and property damage arising out of or in connection with the use, ownership or maintenance of the Common Elements. Such public liability policy shall have a combined single limit of at least One Million Dollars (\$1,000,000.00).

6.2 Form and Content of Insurance Policies. Insurance policies carried pursuant to subsection 6.1 above shall be written by companies authorized to do business in North Carolina and shall include the provisions listed below:

6.2.1 Mandatory Provisions.

(i) Exclusive authority to adjust losses under policies obtained by the Community Association shall be vested in the Community Association's Executive Board; provided, however, no Mortgagee having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related thereto;

(ii) Each Owner and any Mortgagee holding a security interest in such Owner's Lot or Condominium Unit shall be an insured under the policy to the extent of such Owner's and Mortgagee's interest therein;

(iii) The insurer shall waive its right to subrogation under the policy against any Owner or Owner's household;

(iv) No act or omission by any Owner, unless acting within the scope of the Owner's authority on behalf of the Community Association, shall preclude recovery under the policy;

(v) If, at the time of a loss under the subject policy, there is other insurance in the name of an Owner covering the same risk covered by such policy, the Community Association's policy shall be deemed the primary insurance; and

(vi) All casualty insurance policies shall have an "inflation guard endorsement" and an "agreed amount endorsement," if reasonably available.

6.3 Optional Insurance. If available at reasonable cost, as determined in the sole discretion of the Board, the Board may obtain:

6.3.1 Public liability insurance policy applicable to all Community Property insuring the Community Association and its Members for all damage or injury caused by the negligence of the Community Association or any of its employees, managers, Members or agents.

6.3.2 Directors' and officers' liability insurance.

6.3.3 Workers' compensation insurance, if and to the extent necessary to satisfy the requirements of applicable law.

6.3.4 A fidelity bond or employees' dishonesty coverage covering directors, officers, employees, and other persons handling or responsible for Community Association funds. The amount of fidelity or employees' dishonesty coverage, if obtained, shall be determined in the Board's reasonable

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business judgment. Such coverage if obtained, shall contain a waiver of all defenses based upon the exclusion of persons serving without compensation and shall not be subject to cancellation, non-renewal or substantial modification without at least ten (10) days' prior written notice to the Community Association.

6.4 Certificates of Insurance. An insurer issuing an insurance policy under this Article shall issue certificates or memoranda of insurance to the Community Association and upon written request, to any Owner or Mortgagee. Pursuant to subsection 47F-3-113(f) of the Act, such insurer may not cancel or refuse to renew the referenced policy until thirty (30) days after notice of the proposed cancellation or non-renewal has been mailed to the Community Association and to each Owner and Mortgagee to whom certificates or memoranda of insurance have been issued at their respective last known addresses.

6.5 Individual Owner Coverage. An insurance policy issued to the Community Association does not prevent an Owner from obtaining insurance for such owner's own benefit.

6.6 Annual Review. All insurance policies shall be reviewed annually by one or more qualified persons, at least one of whom must be in the real estate industry and familiar with construction in Wake County, North Carolina.

6.7 Damage and Destruction of Common Elements.

6.7.1 In General. Immediately after damage or destruction by fire or other casualty to all or any portion of any Common Element, the Executive Board or its duly authorized agent, shall proceed with the filing and adjustment of all claims arising under such insurance and obtain reliable and detailed estimates of the cost of repair or reconstruction of the damaged or destroyed property. Repair or reconstruction, as used in this subsection 6.7.1 means repairing or restoring the damaged property to substantially the same condition and location that existed prior to the fire or other casualty together with any changes or improvements necessary to comply with the then current applicable building codes.

6.7.2 Repair and Reconstruction. Any damage or destruction to the Common Elements required to be covered by insurance written in the name of the Community Association, shall be repaired or reconstructed promptly unless (i) repair or replacement would be illegal under any state or local statute or ordinance; or (ii) within sixty (60) days after the casualty, at least eighty percent of (80%) of the Total Association Vote otherwise agree, or (iii) the Community is terminated in accordance with the terms and provisions of the Act and Article XIV. No Mortgagee shall have the right to participate in the determination of whether damage or destruction to such Common Elements shall be repaired or reconstructed. The cost of repair or replacement in excess of insurance proceeds and the Reserves Account shall be a Common Expense.

6.7.3 Restoration to Natural State. In the event that the Community Association shall determine in the manner described above that the damage or destruction to the Common Element shall not be repaired or reconstructed and no alternative improvements are authorized, such property shall be restored to its natural state and maintained as an undeveloped portion of the Community Property by the Community Association in a neat and attractive condition.

6.7.4 Distribution of Excess Proceeds and Insufficient Proceeds. Pursuant to subsection 47F-3-113(g) of the Act, if any improvement on the Common Elements is not repaired or replaced, the insurance proceeds attributable to the damaged improvements shall be used to restore the damaged area to a condition compatible with the remainder of the Community, and the remainder of the proceeds shall be distributed to all Owners or Mortgagees as their interest may appear in proportion to the

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Common Expense Liability of all the Lot or Condominium Units.

6.8. Inadequate Insurance Proceeds. If the damage or destruction for which the insurance proceeds are paid is to be repaired or reconstructed and such proceeds are insufficient to defray the cost thereof, the Executive Board shall, without the necessity of a vote of the Community Association's Members, levy a special assessment against all Owners in proportion to the annual assessments paid by such Owners. Additional assessments may be made in like manner at any time during or following the completion of any repair or reconstruction.

6.9 Damage and Destruction to Specified Lot or Condominium Units. The damage or destruction by fire or other casualty to all or any portion of any improvements on any Lot (i) shall be repaired by the Owner thereof or the applicable association responsible for insuring or maintaining the Single Family Units as appropriate, and (ii) within seventy-five (75) days after such damage or destruction or, where repairs cannot be so completed with the exercise of reasonable diligence and good faith efforts, repairs shall be commenced within such seventy-five (75) day period, and shall be completed within a reasonable time thereafter. Alternatively, the Owner, the Condominium Association or Community Association (in the case of Townhouse Units), as appropriate, may elect to demolish all improvements on such Lot and remove all debris therefrom within seventy-five (75) days following such casualty. In the event of noncompliance with this provision, the Executive Board shall have all enforcement powers specified in subsection 16.2.

6.10 Liability for Negligent or Willful Damage.

6.10.1 Owner-Inflicted Damage to Common Elements. Pursuant to subsection 47F-3-107(b) of the Act, an Owner shall be legally responsible for any damage to any Common Element caused by such owner or his respective allowable tenants, contractors, invitees or licensees, and the Community Association may direct the responsible Owner to repair such damage at his expense or, in the alternative the Community Association may itself accomplish the repairs and recover damages from the responsible Owner; pursuant to the Act, liability of such owner established pursuant to subsection 6.10.3 below shall be an assessment secured by a lien upon such owner's Lot or Condominium Unit.

6.10.2 Community Association Inflicted Damage to Lot or Condominium Units. Pursuant to subsection 47F-3-107(c) of the Act, if an agent of the Community Association acting within the scope of Community Association work or activities, inflicts damage on any Lot or Condominium Unit, the Community Association shall be responsible for repairing such damage, or in the alternative may reimburse the subject Owner or the Condominium Association, as appropriate, for the cost of repairing such damages and any other losses arising in connection therewith. In the event the liability of the Community Association is established pursuant to subsection 6.10.3 below the affected Lot or Condominium Unit Owner may offset such liability against sums owing to the Community Association thereby reducing the amount of any Community Association lien against the subject Lot or Condominium Unit.

6.10.3 Determination of Liability and Hearing. When any claim arising under this subsection 6.10 is less than or equal to the jurisdictional amount established for "small claims" as defined in NCGS 7A-7-120, the aggrieved party may request a hearing before an adjudicatory panel appointed by the Executive Board (or in the absence of appointment of such a panel before the Board itself) to determine responsibility for the alleged damage. Such hearing shall accord to the party charged with causing damages notice of such charge, the opportunity to be heard and to present evidence, and notice of the decision; provided, however, that such panel (or the Board as appropriate) may not assess liability for each damage incident against the party charged, be it an Owner or the Community Association, in excess

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of the foregoing jurisdictional amount. When such claim exceeds the aforesaid jurisdictional amount, liability of any Owner or the Community Association shall be determined as otherwise provided by law.

ARTICLE VII

MAINTENANCE

7.1 Common Elements and Private Streets.

7.1.1 Subject to the provisions of subsection 7.1.3 or as otherwise set forth in this Declaration or the Condominium Declaration, the Community Association shall operate and maintain in good working order and repair the Common Elements and all plant material, site furnishings, structures and any other improvements and facilities located thereon including without limitation, (i) Community playgrounds (if any); (ii) Community recreational and clubhouse facilities (if any); (iii) Community entrance areas and any medians and gazebos appurtenant thereto (if any); (iv) all Bio-Retention Areas regardless on their location within the Community; and (v) Community parking areas and spaces.

7.1.2 Pursuant to the ordinances and regulations of the Authority, the Community Association shall also maintain, regulate and operate the Private Streets (as defined in subsection 1.35 or as such rights-of-way are identified as "Private" on any recorded plat of the Community). Community Association .

7.1.3 Notwithstanding the provisions of this subsection 7.1, however, until such time as Common Expense assessments are levied or assessed by the Executive Board the Declarant shall pay for all Common Expense Liability in accordance with the terms of subsection 47F-3-107(a) of the Act.

7.2 **Townhouse Maintenance.** In addition to the maintenance responsibilities set forth in subsection 7.1.1 above, the Community Association shall provide exterior maintenance upon each Townhouse Lot subject to Class I Assessments as follows: paint, repair, replace, care and maintenance for roofs, gutters, downspouts, exterior building surfaces, trees, shrubs, grass, walks, mailboxes, fences installed by Declarant or the Community Association, exterior post lights (excluding electricity therefor) and other exterior Improvements. Such exterior maintenance shall not include glass surfaces, screens, and if permitted, any approved additions made after the completion of the initial Townhouse Unit unless affirmatively assumed by the Community Association. The Owner of any Townhouse Lot, however, may at his election plant trees, shrubs, flowers and grass in his rear yard or courtyard and may also maintain portions of his entire rear yard provided that such maintenance by the Owner does not hinder the Community Association in performing its maintenance of the Townhouse exterior and the remaining yard spaces. No Owner-performed maintenance shall reduce any assessment payable to the Community Association. No Owner or Occupant shall plant any vegetation in the front yard or along the front facade of the Townhouse Unit except with the prior written approval of the Executive Board.

7.3 **Condominium Maintenance.** Pursuant to the terms of the Declaration of Condominium, the Condominium Association (or such association's designated or delegated agent including the Community Association) shall be responsible the maintenance of the Condominium Units and the common elements appurtenant thereto and therefore each Condominium Unit owner shall also be subject any assessment levied through the Condominium Association in addition to the Base Assessment levied by the Community Association.

7.4 **Apartment Lot Maintenance.** Apartment Lot Owners (i) shall maintain their building or buildings at their own expense (including the Owner of the Exempt Apartment Lot).

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ARTICLE VIII

ARCHITECTURAL REVIEW

8.1 **Purpose.** Of paramount importance in the promulgation of this Declaration is the creation of a community which is aesthetically pleasing and functionally convenient.

8.2 Architectural Review.

8.2.1 **Architectural Review Committee.** The Executive Board of the Community Association or a committee appointed by the Board pursuant to the terms of the Bylaws shall constitute the architectural review board (the "Review Board"). The Review Board is authorized to retain the services of additional consulting architects, landscape architects, urban designers, engineers, inspectors, and/or attorneys in order to advise and assist the Review Board in performing its functions set forth herein with reasonable compensation paid thereto.

8.2.2 **Meetings and Action.** The Review Board shall meet at least quarterly, as well as upon call of the Community Association President or chairperson of the Board appointed review committee at such places as may be designated by the Bylaws, the President or the Review Board chairperson. A majority of the Review Board shall constitute a quorum for the transaction of business, and an affirmative majority vote of those present in person or by proxy at such meeting shall constitute the action of the Review Board on any matter before it.

8.3 Review of Proposed Improvements.

8.3.1 **Review Requirement.** No Improvement (as defined in subsection 1.25) shall be erected, placed or altered, nor shall any building permit be applied for, until the proposed plans and specifications showing the nature, kind, shape, height, materials, exterior color, location and siting of such improvements have been submitted to the Review Board (the "Plans") and expressly approved in writing. In addition, no subsequent alteration or modification of any Improvements or the construction, erection or installation of additional Improvements may be undertaken or allowed to remain on any Lot or Condominium Unit without the review and express written approval of the Review Board. The Review Board shall establish minimum requirements for Plans submitted for approval, but shall have the authority to request such additional information as it may determine is necessary to render its decision.

8.3.2 **Discretion of the Review Board.** The Review Board acting pursuant to subsection 8.3.1 above shall be the sole arbiter of submitted Plans and may withhold approval based upon any reasonable grounds, including purely aesthetic consideration; provided, however, the Review Board shall at all times endeavor to be fair, reasonable, and uniform in its application of the decision making process and the Review Board's procedures and shall use its best efforts to balance the equities between matters of taste, Community design standards and the use of private property.

8.3.3 **Effect of Failure to Approve or Disapprove.** In the event that the Review Board fails to approve or disapprove the design of any proposed Improvements within forty-five (45) days after the Owner has submitted Plans, approval will not be required and the Owner shall be deemed to have fully complied with the provisions of this subsection 8.3; provided, however, that such submission shall not be deemed to have been received by the Review Board if submitted Plans are incomplete, fail to meet the minimum requirements established by the Review Board, contain erroneous data or fail to present adequate information upon which the Review Board can base its decision. In connection therewith the

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Community Association shall promulgate a schedule of reasonable review fees consistent with the complexity of the type of plans reviewed.

8.4 Right to Inspect. Any Review Board member (or the authorized representatives thereof) shall have the right, during reasonable hours, to enter upon any portion of the Community to inspect such property and any Improvements thereon for the purpose of ascertaining whether or not such property and improvements complies with the terms of this Declaration; such inspector shall not be deemed guilty of trespass by reason of such entry.

8.5 Enforcement.

8.5.1 All construction commenced and completed pursuant to Review Board approved Plans shall be constructed substantially and materially in accordance with such approved Plans. In the discretion of the Review Board, an Owner may be required to verify any conditions of Plan approval by a written instrument acknowledged by such Owner on his and his successors-in-interest's behalf and recorded in the County Records.

8.5.2 The Review Executive Board and the Declarant during the Declarant Control Period shall have the specific right (but not obligation) acting through and directing the Review Board to enforce the provisions of this Article and/or prevent any violation thereof by a proceeding at law or equity.

8.6 Liability. NO PERSON SHALL RELY ON PLAN APPROVAL PURSUANT TO THIS ARTICLE IX AS EVIDENCE THAT SUCH PLANS AND THE IMPROVEMENTS CONSTRUCTED IN ACCORDANCE THEREWITH (I) ARE OR WILL BE IN COMPLIANCE WITH ANY BUILDING CODES, ZONING ORDINANCES OR ANY OTHER STATUTE, LAWS, ORDINANCES OR REGULATIONS OF ANY GOVERNMENTAL OR QUASI-GOVERNMENTAL UNIT OR AUTHORITY HAVING JURISDICTION THEREOF; OR (II) ARE CONSISTENT WITH GOOD ENGINEERING ARCHITECTURAL OR CONSTRUCTION STANDARDS, PRACTICE, AND PROCEDURES. NEITHER DECLARANT, THE COMMUNITY ASSOCIATION, THE REVIEW BOARD, NOR THE OFFICERS, DIRECTORS, MEMBERS, EMPLOYEES, AND AGENTS OF ANY OF THEM ASSUMES LIABILITY OR RESPONSIBILITY FOR ANY DEFECT IN ANY IMPROVEMENTS CONSTRUCTED FROM THE APPROVED PLANS AND SHALL NOT BE LIABLE IN DAMAGES TO ANYONE SUBMITTING PLANS, OR TO ANY OWNER OF PROPERTY AFFECTED BY REASON OF MISTAKE IN JUDGMENT, NEGLIGENCE, OR NONFEASANCE ARISING OUT OF OR IN CONNECTION WITH THE APPROVAL OR DISAPPROVAL OR FAILURE TO APPROVE OR DISAPPROVE ANY SUCH PLANS. EVERY PERSON AND EVERY OWNER SUBMITTING PLANS FOR REVIEW AGREES NOT TO BRING ANY ACTION OR SUIT AGAINST THE DECLARANT, THE COMMUNITY ASSOCIATION, THE REVIEW BOARD, OR THE OFFICERS, DIRECTORS, MEMBERS, EMPLOYEES, AND AGENTS OF ANY OF THEM TO RECOVER ANY DAMAGES AND HEREBY RELEASES, REMISES, QUITCLAIMS, AND COVENANTS NOT TO SUE FOR ANY CLAIMS, DEMANDS, AND CAUSES OF ACTION ARISING OUT OF OR IN CONNECTION WITH ANY JUDGMENT, NEGLIGENCE, OR NONFEASANCE AND HEREBY WAIVES THE PROVISIONS OF ANY LAW WHICH PROVIDES THAT A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS, DEMANDS, AND CAUSES OF ACTION NOT KNOWN AT THE TIME THE RELEASE IS GIVEN.

ARTICLE IX

COVENANTS, RESTRICTIONS AND AFFIRMATIVE OBLIGATIONS

9.1 General. Unless otherwise specified, all Occupants of the Community must comply with

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this Article setting out certain restrictions, conditions and obligations.

9.2 Signs. No sign of any kind shall be erected within the Community without the written consent of the Board except (i) such signs as may be required by legal proceedings, (ii) signs of a political nature, and (iii) one "For Sale" sign per Lot or Condominium Unit, six (6) square feet; such sales sign shall not remain on the advertised premises for longer than six (6) months albeit this deadline may be extended for an additional similar period by written approval of the Board; provided, however, the Community Association shall have the right to erect any reasonable and appropriate signs upon the Common Elements and the Declarant is allowed to erect reasonable promotional signs at the entry of the Community. All Community signs are subject to any regulations and ordinances of any governmental authority having jurisdiction thereof.

9.3 Vehicles.

9.3.1 Parking. Permitted motorized vehicles shall not be parked on any sidewalks, Private Streets or on Community landscaping, but only in those areas specifically improved and designated for such purpose including by way of example, marked parking spaces, garages, driveway, or parking pads.

9.3.2 Oversized Vehicles. Except in areas specifically designated by the Community Association and adequately screened for such purposes, if any, or otherwise permitted in the sole and unrestricted discretion of the Board, no mobile home, trailer (either with or without wheels), motor home, tractor, truck (other than standard pick-up trucks), commercial vehicles of any type, campers, motorized campers or trailers, boats or other watercraft or associated trailers, may be parked within any portion of the Community except in an enclosed permissible garage or areas specifically designated by the Board for such parking; provided, however, that such restriction shall not apply to the Declarant and Builders in the course of construction and development activities nor preclude entry into the Community of commercial trucks and vehicles providing legitimate goods and services to permitted residences and businesses within the Community during normal business hours.

9.3.3 Inoperable Vehicles. No abandoned, unlicensed, inoperable or unsightly vehicles shall be stored or kept on any portion of the Community. No Occupant shall repair or restore any vehicle of any kind within the Community except within enclosed garages or workshops or as occasioned by the need for emergency repairs, and then only to the extent necessary to enable the transport of such vehicle to a proper repair facility.

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9.4 Household Pets.

9.4.1 No animals, livestock, or poultry of any kind may be raised, bred, kept, or permitted on any Lot, with the exception of dogs, cats, or other usual and common domestic pets. The maximum allowable number of such household pets is two (2).

9.4.2 Household Pets are prohibited outdoors unless the owner or his agent is in attendance or in immediate proximity to the animal, with the ability to take immediate control, as appropriate. No pets are permitted to roam free, be boarded, housed or kept outdoors or bred or maintained for any commercial purposes. Any Household Pets, when outside the must be confined on a leash or within a fenced courtyard or rear yard, or underground electrical "pet fence" device. There shall be no exterior doors installed that allow the pet to pass in and outside on his own free will.

9.4.3 Vicious or excessively barking dogs are considered a nuisance and shall not be

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allowed
left outside at any time. Dog breeds identified as vicious or dangerous breeds by the AKC, AKA, Humane Society or the United States Center for Disease Control are strongly discouraged in the Community. Excessive barking or other pet noise within Single Family Units or Apartment Dwelling Units annoying to neighboring properties and neighborhoods is also prohibited

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9.4.4 It shall be a pet owner's responsibility to immediately remove pet waste from the Lot yard and all other portions of the Community including but not limited to all Common Elements, grassed park and open space areas and planting easements.

9.4.5 *Nothing contained in this subsection 9.4 shall limit the right of any Condominium Association or Apartment Lot Owner to promulgate rules and regulations regarding household pets that are more stringent than these set forth herein.*

9.5 **Street Trees and Other Plant Material.** Street trees and other plant material located in or on the Common Elements or any landscape easements shall not be damaged or removed by any Community Occupant. Trees damaged by an Owner or Occupant shall be replaced with a similar type at such responsible Person's expense payable to the Community Association. Landscape replacement within the Common Elements or any landscape easements shall be handled exclusively by the Community Association.

9.6 **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 or Condominium and Townhouse Units, Common Elements and Community rights of way and Private Streets. All rubbish, trash, and garbage shall be regularly removed from any Lot or Condominium Unit and shall not be allowed to accumulate thereon. Trash spillage shall be the responsibility of the subject Owner or Occupant for removal. Notwithstanding the foregoing, the Declarant hereby expressly reserves for itself and any general contractor the right to dump and bury rocks, trees and stumps on property within the Community as needed for efficient construction development of the Community provided that such fill is done according to good building practice and in accordance with all applicable regulations.

9.7 **Porches, Stoops, Decks and Front Yards.** Porches, stoops, decks and yards shall be maintained in a neat and orderly fashion. Outdoor furnishings visible from the street shall be limited to traditional porch furnishings. No appliances, interior furniture or unusual items may be placed in the yard, on the porch, patio or deck. Toys, bicycles, carriages, strollers and similar items exposed to the street ~~should~~ not be stored on porches, decks or in locations visible from the street.

shall
9.8 **Antennas, Satellite Dishes or Discs.** Except as otherwise set forth herein and subject to any regulations of the Federal Communication Commission (as from time to time amended), no exterior antennas of any kind or satellite dishes or discs larger than one meter in diameter shall be placed, allowed or maintained, upon any portion of the Community without the prior written consent of the Board. In accordance with FCC regulations on the date hereof, any satellite dish or disc one meter in diameter or smaller may be erected without such Board's approval provided it is not attached to the street facing elevation(s) of a building unit and shall be placed as discretely as possible. Nothing in this subsection 9.8, however, shall prohibit (albeit not obligate) the Declarant or the Community Association from erecting a central master antenna, satellite dish or other similar master telecommunication system for the benefit of the entire Community and charging fees for usage thereof.

9.9 **Entry Features.** Occupants shall not alter, remove or add improvements to any site features (including, but not limited to; walls, piers, fences, monuments, light fixtures, signage and planting) constructed by the Declarant or the Community Association on any Community property, or any

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part of any easement area associated therewith without the prior written consent of the Board.

9.10 Nuisance. Each Owner and Occupant shall be responsible for preventing the development of any unclean, unhealthy, unsightly, or unkempt condition on his Lot or Condominium or Apartment Dwelling Unit. No Lot or any Condominium, Townhouse or Apartment Dwelling shall be used, in whole or in part, for the storage of anything that will cause such property to appear unclean or untidy or that will be obnoxious to the eye; nor shall any substance, thing, or material be kept upon or within any Lot or Condominium Unit that will emit foul or obnoxious odors (including pet waste) or that will cause any excessive noise or other condition that will or might disturb the peace, quiet, safety, comfort, or serenity of Community Occupants including any speaker, horn, whistle, siren, bell, amplifier or other sound device, except such devices as may be used exclusively for security purposes. No noxious or offensive activity shall be carried on upon any Lot or within any Condominium, Townhouse or Apartment Dwelling Unit, nor shall any Community Occupant undertake any action or activity that would tend to cause embarrassment, discomfort, annoyance, or nuisance to any Community Occupant.

9.11 Drainage. The Bio-Retention Areas, catch basins and drainage areas are solely for the purpose of natural flow of water only, and no Owner or Occupant may obstruct (with debris or otherwise) or re-channel the drainage flows after the location and installation of drainage swales, storm sewers, or storm drains. Declarant and the Community Association hereby reserves a perpetual easement across all portions of the Community for the purpose of altering drainage and water flow and for maintaining the Bio-Retention Areas; provided, however, that the rights exercised pursuant to such reservations shall be exercised with a minimum of interference to the quiet enjoyment of the affected property with reasonable steps ~~be~~ taken to protect such property and any resulting damage repaired. No Owner shall intentionally divert water runoff from their property onto any adjacent Lot.

9.12 Limits on Occupancy. To the extent permissible by law and subject to Authority ordinance or regulation (currently in effect or as enacted in the future), occupancy within any Condominium, Townhouse or Apartment Dwelling Unit shall be limited to two (2) persons per bedroom.

9.13 Subdivision of Lot or Condominium Lot. No Lot shall be subdivided or its boundary lines changed except with the prior written approval of the Declarant or its designee and in accordance with applicable municipal or state law; Declarant, however, hereby expressly reserves the right to subdivide, re-subdivision or recombine any Lot or Condominium Unit or other property in the Community owned by the Declarant so long as any such subdivision or recombination shall be permissible by the ordinances and regulations of the Authority and the provisions of the Act and/or the North Carolina Condominium Act.

ARTICLE X

ADDITIONAL EASEMENTS

10.1 Easements for Utilities. There is hereby reserved to the Declarant and the Community Association easements upon, across, above and under all property within the Community for access, ingress, egress, installation, repairing, replacing, and maintaining telecommunications, electrical, sanitary sewer, water, gas, storm drainage systems, including but not limited to, the Bio-Retention Areas, a master television antenna system, cable television system, fiber optic telecommunications system or security system which the Declarant or Community Association may install (but is not required to install) to serve the Community. It shall be expressly permissible for the Declarant, the Community Association (or the designee of either including any private or public utility or governmental authority, as appropriate) to install, repair, replace, and maintain or to authorize the installation, repair, replacement and maintenance

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of such wires, conduits, cables and other equipment related to the provision of any such utility or service. Should any party furnishing any such utility or service request a specific license or easement by separate recordable document, the Board shall have the right to grant such easement or license. It is further provided, however, that (i) any Person exercising rights pursuant to this easement shall be liable for any damage to the Lot or Condominium Unit so entered and be responsible for reasonably restoring such damaged property to substantially the same condition as existed prior to such damage and (ii) in no event shall any utility line, system or other utility apparatus be constructed or installed under any building or other substantial facility or structure (to be constructed or caused to be constructed by Developer or its assignee) within the Community or constructed, installed, repaired, replaced or maintained in any manner that would impair the structural integrity or such Community improvements.

10.2 Easement for Entry. The Executive Board shall have the right (but not the obligation) to enter upon any property within the Community for emergency, security, and safety reasons. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner. This right of entry shall include the right of the Board to enter to cure any condition which may increase the possibility of a fire, slope erosion, or other hazard in the event an Owner or Occupant fails or refuses to cure such condition after written notice of the Board.

10.3 Easement to Governmental and Public Authorities. An easement is hereby established for municipal, state or other public utilities serving the Community, and for their agents and employees over all portions of the Community for setting, removing and reading utility meters, maintaining, replacing, inspecting utility or drainage connections and all Bio-Retention Areas within the Community, and acting with other purposes consistent with public safety and welfare, including without limitation, police and fire protection.

10.4 Easements for Maintenance and Repair. Reciprocal appurtenant easements are hereby reserved between adjacent Lot for the purpose of maintaining or repairing the Lot improvements and landscaping, which easement shall extend to a distance of not more than five (5) feet as measured from any point on the common boundary between the Lot and along a line perpendicular to such boundary at such point. Such easement shall be used only for such period of time as is reasonably necessary to complete needed maintenance or repair. Any Owner exercising its right pursuant to such easement shall be liable for any damage to the Lot or Condominium Unit so entered and be responsible for restoring such damaged Lot or Condominium Unit to substantially the same condition as existed prior to such damage.

10.5 Cross Access Easement. Declarant reserves the right to subject the Property to a cross access easement over and through the Common Elements for the benefit of the property adjacent to the eastern border of the Community as may be required by the Authority.

10.6 Dumpster Easement. There is hereby granted to each Owner of any Single Family Unit and every Occupant of an Apartment Dwelling Unit the right and easement to utilize any trash dumpsters located on any Townhouse, Condominium or Apartment Lot or on the Common Facilities Lot or other area of the Common Elements.

10.7 Easement for Community Construction, Development and Marketing. As set forth in Article XII (subsection 12.2) an easement for the benefit of the Declarant and the Ancillary Owners is reserved for Community development, construction and marketing.

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ARTICLE XI

CONDEMNATION

11.1 Common Elements. If a portion of the Common Elements shall be acquired by any authority having the power of eminent domain (collectively or individually the "Condemnation Authority") or conveyed by the Board in lieu of and under threat of condemnation pursuant to the written direction of eighty percent (80%) of the Total Association Vote, the provisions of subsection 6.7 applicable to damage or destruction to Common Element Improvements, shall govern the replacement or restoration of the affected Improvements and the actions to be taken in the event that such improvements are not restored or replaced. Pursuant to section 47F-1-107 of the Act the condemnation award attributable to such elements shall be paid to and be an asset of the Community Association.

11.2 Lot or Condominium Units.

11.2.1 Entire Lot. In the event any Condemnation Authority shall acquire an entire Lot leaving the owner of such Lot with a remnant which is not practically or lawfully useable for any purpose permitted by this Declaration, such award shall be payable to such owner for his interest in the Lot together with the value of the property rights and benefits granted to the Owner hereunder. Upon such acquisition, unless the court decree otherwise provides, such Lot's allocated interests hereunder are automatically reallocated to the remaining Lot in proportion to the respective allocated interests of those Lot before the taking, exclusive of the Lot taken. The terms of this subsection 11.2.1, however, shall be subject to the terms of any the Declaration of Condominium.

11.2.2 Partial Lot. Except as provided in subsection 12.2.1 above, in the event a portion of a Lot shall be acquired by any Condemnation Authority, such award shall compensate the affected Owner for the reduction in value of the Lot. Upon such acquisition, unless the court decree otherwise provides, (i) such Lot's allocated interests are reduced in proportion to the reduction in the size of the Lot and (ii) the portion of the allocated interests divested from the partially acquired Lot are automatically reallocated to such Lot and the remaining Lots in proportion to the respective allocated interests of those Lot or Condominium Units before the taking. The terms of this subsection 11.2.2, however, shall be subject to the terms of the Declaration of Condominium.

ARTICLE XII

SALES AND CONSTRUCTION ACTIVITIES OF DECLARANT AND ANCILLARY OWNERS

12.1 Rights Reserved. Notwithstanding any provisions or restrictions contained in the Rules and Regulations, this Declaration, the Bylaws, Supplementary Declaration, use restrictions or any amendments to the foregoing during the Declarant Control Period, the Declarant and the Ancillary Owners reserve on their respective behalf and on behalf of their respective agents, employees and Declarant approved general contractors and builders the right to develop and construct Community infrastructure, facilities, buildings, improvements and Community rights of way (including Private Streets and sidewalks) together with the right to undertake such activities as may be reasonably required, convenient, or incidental to the development, improvement, completion and sale of the any portion of the Community, including, without limitation, the installation and operation of sales construction trailers, offices and dumpsters and , sales models, offices and appropriate marketing signage.

12.2 Easement to Perform Reserved Rights. During the Declarant Control Period and

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without charge or other obligations, the Declarant and the Ancillary Owners hereby expressly reserve unto themselves and for the benefit of their respective agents, employees, sales representative and brokers, and Declarant approved general contractors and builders a non-revocable (during such defined period) right, privilege, and easement over, under, in, on and within the Community, for the purposes of taking all actions related to or connected with the Community-wide construction, development and marketing/sales activities specified in Article 12.

ARTICLE XIII

AMENDMENT OF DECLARATION

13.1 Amendment by Owners. The covenants, conditions and restrictions of the Declaration may be amended during the first thirty (30) year period or thereafter by an instrument signed by the Owners to which at least sixty-seven percent (67%) of the Total Association Vote is allocated; provided, however, that the Executive Board may amend this Declaration to correct any obvious error or inconsistency in drafting, typing or reproduction or amendment requested by the Federal National Mortgage Association, without action or consent of the Owners, and such amendment shall be certified as an official act of the Executive Board and recorded in the Wake County Registry.

13.2 Certification and Recordation of Amendment. Any instrument amending this Declaration (other than an amendment by the Executive Board to correct an error or inconsistency in drafting, typing, or reproduction or an amendment by Declarant or the Executive Board pursuant to subsection 13.2 hereof) shall be delivered, following approval by the Owners, to the Executive Board. Thereupon, the Executive Board shall, within thirty (30) days after delivery:

13.2.1 Reasonably assure itself that the amendment has been duly approved by the Owners as provided in subsection 13.1, and for this purpose, the Executive Board may rely on its roster of Members and shall not be required to cause any title to be examined;

13.2.2 Attach to the amendment a certification as to its validity, which certification shall be executed by the Community Association, and shall be in the following form:

CERTIFICATE OF VALIDITY

By authority of its Executive Board, Highland Village Property Owner's Community Association, Inc. (the "Community Association"), acting through its duly authorized undersigned President or Vice President, hereby certifies that the foregoing instrument has been approved by affirmative vote or by written statement signed by Owners to which at least sixty-seven percent (67%) of the Total Community Association Vote (as defined in the Declaration) has been allocated and such instrument is therefore a valid amendment to the existing Declaration of Covenants, Conditions and Restrictions for Highland Village Community (the "Declaration").

IN WITNESS WHEREOF, the Highland Village Property Owner's Community Association, Inc. has caused this instrument to be signed in its corporate name by its duly authorized President or Vice President, attested by its Secretary or Assistant Secretary, and its seal to be hereunto affixed, all effective as of the ____ day of _____, 2____.

HIGHLAND VILLAGE PROPERTY
OWNER'S COMMUNITY ASSOCIATION, INC.

ATTEST:

Secretary

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By: _____
Name: _____
Title: _____ President

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13.2.3 Within the thirty (30) day period aforesaid, cause the amendment to be recorded in the Wake County Registry; provided that any delay in recording such amendment within the aforesaid thirty (30) day period shall not invalidate the amendment.

13.3 **Effect and Validity of Amendment.** All amendments shall be effective from the date of proper recordation in the Wake County Registry. When any instrument purporting to amend this Declaration has been certified by the Executive Board and recorded as provided in this section, it shall be conclusively presumed that such instrument constitutes a valid amendment as to the Owners.

13.4 **Amendment by Declarant.** Notwithstanding anything to the contrary set forth in this Article and in accordance with its rights as Declarant pursuant to section 47F-2-117 of the Act, the Declarant may unilaterally amend the Declaration at any time and from time to time (i) if such amendment is to necessary bring any provision hereof into compliance with any applicable governmental statute, rule, regulation or judicial determination which shall be in conflict therewith; (ii) if such amendment is necessary to qualify the Community Association for tax-exempt status; (iii) if such amendment is necessary to enable any reputable title insurance company to issue title insurance coverage with respect to the Property subject to this Declaration; (iv) if such amendment is required by an institutional or governmental lender or purchaser of Mortgage loans, including for example, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to enable such lender or purchaser to make or purchase Mortgage loans on the Lot or Condominium Units subject to this Declaration, or (v) if such amendment is necessary to enable any governmental agency or reputable private insurance company to guarantee or insure Mortgage loans on the Lot or Condominium Units subject to this Declaration; provided, however, any such amendment shall not adversely affect the title to any Owner's Lot or Condominium Unit unless any such Lot or Condominium Unit Owner shall consent thereto in writing.

ARTICLE XIV

DISSOLUTION OR INSOLVENCY OF THE COMMUNITY ASSOCIATION

The Community Association may be dissolved and the Community terminated pursuant to the provisions and procedures of section 47F-2-118 of the Act.

ARTICLE XV

LEASING AND RIGHT OF FIRST REFUSAL FOR SINGLE FAMILY UNITS

15.1 **Leasing of Single Family Units.** To the extent permissible by law, all Single Family Units shall be owner occupied and not leased to otherwise occupied by non-Owner occupants with the exception of guests and family visiting such Single Family Owners for a reasonable and customary period; such guests during such visits shall abide by all applicable terms and conditions of the Declaration and the Rules and Regulations of the Community Association and/or Condominium Community Association as applicable.

15.2 Right of First Refusal.

15.2.1 **Grant of Preferential Right.** DHIC, Inc. or its affiliate assignee (collectively, "DHIC") is hereby granted the preferential right to acquire any Single Family Unit on the following terms and conditions: In the event that an Owner of a Single Family Unit or its/his/her heirs, executors,

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administrators or assigns shall receive a bona fide offer to sell, grant, or donate its respective Single Family Unit or for any reason decides to sell, grant or donate such Unit to any Person (as defined in subsection 1.33), such owner shall immediately forward written notice to outlining the terms and conditions of such proposed conveyance to DHIC (the "Notice"). DHIC shall have the privilege of acquiring such Unit at the same purchase price, terms and conditions as that so offered to or by such Owner (the "Offer"). If DHIC so elects (by a majority vote of its Board of Directors or if appropriate by the governing body of its affiliate assignee), DHIC shall notify the subject Owner in writing of its intent to accept the Offer and shall execute a suitable contract to purchase such Single Family Unit within a period of thirty days (30) days its receipt of the Owner's Notice. The failure of DHIC to accept the Offer or execute a contract within the period provided shall terminate, nullify and void this Right of First Refusal to purchase such Unit granted hereunder, and the Single Family Unit Owner shall thereafter be at liberty to sell or otherwise convey such unit to any other Person. The provisions of this section shall expire, however, 21 years after the death of the last survivor of the now living descendants of Elizabeth II, Queen of England; provided, however, that this section shall not apply in the event of a foreclosure sale pursuant to the terms of a deed of trust held by an Eligible Mortgagee.

15.2.2 Notices. Any notice ⁶² of other document to be given pursuant to this subsection 15.2 shall be deemed to have been duly given if in writing and sent by registered mail or hand delivered as appropriate (i) to the address of the Single Family Unit or (ii) to: *DHIC, Inc., 113 South Wilmington Street, Raleigh, North Carolina, 27601, Attention: Executive Director*, or to such other address as may be given in a notice sent to the parties hereto.

ARTICLE XVI

GENERAL PROVISIONS

16.1 Duration. The covenants, restrictions and conditions of this Declaration shall run with and bind the Property, and shall inure to the benefit of and shall be enforceable by the Community Association or any Owner, their respective legal representatives, heirs, successors, and assigns, bind the Property for a period of twenty (20) years from the filing thereof, after which time, any such provision shall be (i) automatically extended for successive periods of twenty (20) years from the date hereof, unless such extension is disapproved by at least sixty-seven percent (67%) of the Total Association Vote as evidenced by instrument reflecting such disapproval recorded in the County Records within the year immediately preceding the beginning of any twenty (20) year renewal period; (ii) or the Community Association is dissolved or otherwise terminated pursuant Article XVI or (ii) as otherwise provided by law.

16.2 Enforcement. The Community Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Community Association or by any Owner to enforce any such provision herein shall in no event be deemed a waiver of the right to do so thereafter. Pursuant to the provisions and procedures of section 47F-3-107.1 of the Act the Community Association may also levy reasonable fines not to exceed \$150.00 per violation any violations for any infraction of this Declaration of any supplementary declaration or amendment thereto, the Bylaws and/or the Rules and Regulations; any fines so paid and collected by the Community Association shall be deposited in the Community Association's general fund or Reserve Account in the Board's discretion.

16.3 Notices. Any notice required to be sent to any Member pursuant hereto shall be deemed to have been properly sent and notice thereby given when delivered personally or sent by mail with the proper postage affixed to the address appearing on the Community Association membership list. It shall

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be the obligation of every Member to immediately notify the Community Association Secretary in writing of any change of address. Notice to one or more co-Owners shall constitute notice to all co-Owners. Any Person who becomes a Member following the first day in the calendar month in which said notice is delivered or mailed shall be deemed to have been given notice if notice was given to his predecessor in title.

16.4 Books and Records.

16.4.1 Inspection by Members and Mortgagees. This Declaration (and any amendments of supplementary declarations thereto), copies of the Rules and Regulations, the Bylaws, membership register, books of account, and minutes of Member meetings of the Community Association, the Executive Board, and any Community Association committee shall be made available for inspection and copying by any Member of the Community Association or Eligible Mortgagee of their respective duly appointed representatives for any lawful and reasonable purpose at the office of the Community Association or at such other reasonable place as the Board shall prescribe; provided, however, the Executive Board shall establish reasonable rules with respect to (i) notice to be given to the custodian of the records; (ii) hours and days of the week such inspection may be made, and (iii) payment of the cost of document reproduction.

16.4.2 Inspection by Directors. Every director shall have the absolute right at any reasonable time to inspect all books, records, and documents of the Community Association. Such right of inspection by a director includes the right to make extra copies of documents at reasonable expense to the Community Association.

16.5 Financial Statements. Financial statements for the Community Association shall be compiled annually for distribution to the Members in the manner as the Executive Board may decide or is otherwise provided by law; provided, however, after having received the Board's financial statements at the Community Association annual meeting, the Members, by an affirmative majority vote, may require that the financial statements of the Community Association be audited as a Common Expense by a certified public accountant. Upon written request of any Eligible Mortgagee and upon payment of all costs associated therewith, such Mortgagee shall be entitled to receive a copy of the audited financial statements of the Community Association within ninety (90) days of the date of the request.

16.6 Litigation. No judicial or administrative proceeding shall be commenced or prosecuted by the Community Association unless approved by at least seventy-five percent (75%) of the Total Community Association Vote (as defined in subsection 1.41). This section shall not apply, however, to (i) actions brought by the Community Association to enforce the provisions of this Declaration (including, without limitation, the foreclosure of liens), (ii) the imposition and collection of assessments as provided in Article VI hereof, (iii) proceedings involving challenges to ad valorem taxation, or (iv) counterclaims brought by the Community Association in proceedings instituted against it.

16.7 Agreements. Subject to the prior approval of Declarant during the Declarant Control Period, all agreements and determinations, including settlement agreements regarding litigation involving the Community Association, lawfully authorized by the Executive Board shall be binding upon all Owners, their heirs, legal representatives, successors, assigns, and others having an interest in the Community or the privilege of possession and enjoyment of any part of the Community.

16.8 Indemnification. In accordance with the North Carolina Nonprofit Corporation Act and to the full extent allowable under State law, the Community Association shall indemnify every Person who was or is a party or who is threatened to be made a party to any threatened, pending, or completed

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action, suit, or proceeding, whether civil, criminal, administrative, or investigative (other than an action by or in the right of the Community Association), by reason of the fact that such Person is or was serving as a director or officer of the Community Association against any and all expenses, including attorneys' fees, imposed upon or reasonably incurred in connection with any such action, suit, or proceeding, if such Person acted in a manner reasonably believed to be in or not opposed to the best interest of the Community Association and, with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful. Any indemnification hereunder shall be made by the Community Association only as authorized in a specific case upon determination that indemnification of the Person is proper under the circumstances.

16.9 Other Governing Instruments. Notwithstanding anything contained herein to the contrary, all the provisions of these covenants shall be subject to, interpreted and applied in accordance with the Cary Town Code and the regulations promulgated thereunder.

16.10 Notice of Sale or Lease. In the event an Owner sells or leases his or her Lot or Condominium Unit, the Owner shall provide in writing to the Community Association, the name of the purchaser or lessee of such Lot or Condominium Unit together with any other information as the Board may reasonably require.

16.11 Gender and Grammar. The singular, whenever used herein, shall be construed to mean the plural, when applicable, and the use of the masculine pronoun shall include the neuter and feminine.

16.12 Severability. Whenever possible, each provision of this Declaration shall be interpreted in such manner as to be effective and valid, but if the application of any provision of this Declaration to any Person or to any property shall be prohibited or held invalid, such prohibition or invalidity shall not affect any other provision or the application of any provision which can be given effect without the invalid provision or application, and, to this end, the provisions of this Declaration are declared to be severable.

16.13 Captions. The Captions of each article, section and subsection hereof, as to the contents of each such article section, subsection are inserted only for convenience and are in no way to be construed as defining, limiting, extending, or otherwise modifying or adding to the particular article, section or subsection to which they refer.

16.14 Conflicts.

16.14.1 Community Documents. In the event of any irreconcilable conflict between the Declaration and the Bylaws, the provisions of this Declaration shall control. In the event of an irreconcilable conflict between this Declaration and the Articles, the provision of the Declaration shall control. Unless otherwise allowable under the Act as being discretionary, in the event of a conflict between or among any provision in this Declaration, the Articles, the Bylaws and the Act, the provisions of the Act shall control.

16.14.2 HUD Section 202 Program. In the event of any conflict between the Community Documents (including this Declaration) and the terms of any deed of trust securing Capital Advances (as defined in subsection 1.25) under HUD's Section 202 Program or any other documents evidencing or otherwise pertaining to the Capital Advances (collectively, the "202 Documentation"), the provisions of the 202 Documentation shall control.

IN WITNESS WHEREOF, the undersigned Declarant has hereunto executed this Declaration

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under seal all by authority duly given as of the day and year first above written.

[SIGNATURE PAGES, ACKNOWLEDGMENTS EXHIBIT OF LEGAL
DESCRIPTION ATTACHED HERETO]

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Signature and Acknowledgement Page
Declaration of Covenants, Conditions
and Restrictions for Highland Village
DHIC, Inc., Declarant/Developer



DECLARANT/DEVELOPER:

DHIC, INC., a North Carolina non-profit corporation

By: 
Name: Gregory F. Warren
Its: President

STATE OF NORTH CAROLINA

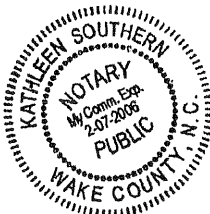
COUNTY OF WAKE

I, Kathleen Southern, a Notary Public for the State and County aforesaid, certify that Gregory F. Warren personally appeared before me this day and acknowledged that he is President of DHIC, Inc., a North Carolina non-profit corporation (the "Corporation") and that by authority duly given and as the act of the Corporation, the foregoing instrument was signed in its name by him as its President and sealed with its corporate seal.

Witness my hand and official seal this 27th day of July, 2004.


Notary Public

My commission expires: 2/7/06



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Signature and Acknowledgement Page
Declaration of Covenants, Conditions
and Restrictions for Highland Village
Highland Manor Apartments, Inc., Ancillary Owner

ANCILLARY OWNER:



HIGHLAND MANOR APARTMENT, INC.,
a North Carolina non-profit corporation

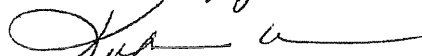
By: 
Name: Gregory F. Warren
Title: President

STATE OF NORTH CAROLINA

COUNTY OF WAKE

I, Kathleen Southern, a Notary Public for the State and County aforesaid, certify that Gregory F. Warren personally appeared before me this day and acknowledged that he is President of **HIGHLAND MANOR APARTMENTS INC.** a North Carolina non-profit corporation (the "Corporation") and that by authority duly given and as the act of the Corporation, the foregoing instrument was signed in its name by him as its President and sealed with its corporate seal.

Witness my hand and official seal this 27th day of July, 2004.


Notary Public

My commission expires: 2/7/06



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Signature and Acknowledgement Page
Declaration of Covenants, Conditions
and Restrictions for Highland Village
Highland Village Limited Partnership, Ancillary Owner

ANCILLARY OWNER:



HIGHLAND VILLAGE LIMITED PARTNERSHIP,
a North Carolina limited partnership (SEAL)

By: Highland Village Development, Inc., a North Carolina
corporation, *its managing general partner*

By: 
Name: Gregory F. Warren
Title: President

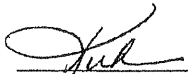
[AFFIX CORPORATE SEAL]

STATE OF NORTH CAROLINA

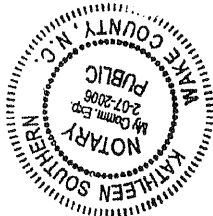
COUNTY OF WAKE

I, Kathleen Southern, a Notary Public for the State and County aforesaid,
certify that Gregory F. Warren personally appeared before me this day and acknowledged that he is
President of **HIGHLAND VILLAGE DEVELOPMENT, INC.**, a North Carolina corporation (the
"Corporation") and managing general partner of **HIGHLAND VILLAGE LIMITED PARTNERSHIP**,
a North Carolina limited partnership (the "Partnership") and that by authority duly given and as the act of
the Corporation in its capacity as managing general partner of the Partnership, the foregoing instrument
was signed in its name by him as its President and sealed with its corporate seal.

Witness my hand and official seal this 27th day of July, 2004.


Notary Public

My commission expires: 2/7/06



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Signature and Acknowledgement Page
Declaration of Covenants, Conditions
and Restrictions for Highland Village
Highland Seniors Limited Partnership, Ancillary Owner

ANCILLARY OWNER:



HIGHLAND SENIORS LIMITED PARTNERSHIP,
a North Carolina limited partnership (SEAL)

By: HIGHLAND SENIORS DEVELOPMENT, INC.,
a North Carolina corporation, *its managing general partner*

By: 
Name: Gregory F. Warren
Title: President

[AFFIX CORPORATE SEAL]

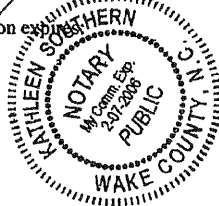
STATE OF NORTH CAROLINA

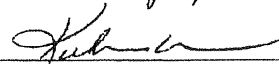
COUNTY OF WAKE

I, Kathleen Southern, a Notary Public for the State and County aforesaid, certify that Gregory F. Warren personally appeared before me this day and acknowledged that he is President of **HIGHLAND SENIORS DEVELOPMENT, INC.**, a North Carolina corporation (the "Corporation") and managing general partner of **HIGHLAND SENIORS LIMITED PARTNERSHIP**, a North Carolina limited partnership (the "Partnership") and that by authority duly given and as the act of the Corporation in its capacity as general partner of the Partnership, the foregoing instrument was signed in its name by him as its President and sealed with its corporate seal.

Witness my hand and official seal this 27th day of July, 2004.

My commission expires 2/7/06




Notary Public

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

North Carolina – Wake County

The foregoing certificate ___ of Kathleen Southern

____ 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 James Morgan
Assistant/Deputy Register of Deeds

This Customer Group

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3 # of Pages