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RECORDED AND VERIFIED
MARY SUE DOTS

STATE OF NORTH CAROLINA REGISTER OF DEEDS
COUNTY OF NEW HANOVER '96 JUN 20 PM 3 08
DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS
OF THE VILLAGE AT CHURCHILL

THIS DECLARATION, made this the 20th day of JUNE, 1996, by Hansen & Tucker Properties, Inc., a North Carolina Corporation, hereinafter referred to as "Declarant";

W I T N E S S E T H:

WHEREAS, Declarant is the owner of certain property in New Hanover County, North Carolina, which is more particularly described as follows:

Being all of Section One THE VILLAGE AT CHURCHILL as the same is shown on a map thereof recorded in Map Book 36 at Page 34 in the Office of the Register of Deeds of New Hanover County, North Carolina, to which map reference is hereby made for a more particular description.

NOW, THEREFORE, Declarant hereby declares that all of the properties described above shall be held, sold and conveyed subject to the following easements, restrictions, covenants, and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with the real property and be binding on all parties having any right, title or interest in the described properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

ARTICLE I

Definitions

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Section 1. Assessments means a share of the funds required for the payment of common expenses which from time to time is assessed against the unit owner by the Association.

Section 2. Association and HOA shall be used interchangeably to mean and refer to Village at Churchill Homeowners Association, Inc., a private non-profit corporation formed or to be formed by the developer primarily as a Homeowners Association for the lot owners in THE VILLAGE AT CHURCHILL, all of whom shall be members of the Association.

Section 3. Board of Directors or Board means the Board of Directors of the Association, and Director means a member of the Board.

Section 4. Building or Buildings shall mean all structures and improvements now or hereafter erected upon the property.

Section 5. Common Area shall mean all real property owned, or to be owned in the future, by the Association for the common use and enjoyment of the Owners. The Common Area to be owned by the Association at the time of the conveyance of the first lot is described as follows:

Being all of that area shown and designated as Common Area on the map of Section 1 THE VILLAGE AT CHURCHILL recorded in Map Book 36 on Page 34 of the New Hanover County Registry; the said common areas being further described as being all of the areas shown on the aforesaid map with the exception of lots numbered 1 through 6 inclusive, together with the roads and streets in THE VILLAGE AT CHURCHILL as they exist now or in the future.

Section 6. Common Expenses include the expenses of administration, maintenance, operation, repair and replacement (including a capital reserve for repair maintenance and

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replacement), of the common area and facilities, and payment of master hazard insurance policies, master liability insurance policies, water supply, sewage disposal, trash, garbage and refuse pickup, lawn upkeep and flood insurance, as applicable, and such other expenses set out in this declaration or declared by the Association to be common expenses.

Section 7. Declarant shall mean and refer to Hansen & Tucker Properties, Inc., a North Carolina corporation, its successors and assigns, if such successors or assigns should acquire all remaining undeveloped lots from the Developer for the purpose of continuing development of the subdivision. The address of the corporation is 315 Friday Drive, Wilmington, North Carolina 28405.

Section 8. Declaration shall mean this instrument as it may be from time to time amended or supplemented.

Section 9. Development shall mean the THE VILLAGE AT CHURCHILL Subdivision in its current configuration, and as expanded from time to time.

Section 10. Eligible Mortgage Holder or eligible Holders is defined as a holder of a first mortgage or lien on a unit who has requested notice of certain matters from the Association.

Section 11. Limited Common Areas and Facilities shall mean and include those common areas and facilities which are reserved for the use of a certain unit or units to the exclusion of other units, as more specifically defined herein, or as shown on the subdivision plat or plats, and revisions thereto.

Section 12. Lot shall mean and refer to any of the lots numbered 1 through 6, inclusive as shown on the plat of Section 1, THE VILLAGE AT CHURCHILL recorded as aforesaid, in the New Hanover County Registry together with the structure or dwelling thereon which structure may be separately referred to as a "Townhouse", or "Townhouse Unit", or "Unit".

Section 13. Mortgagee shall mean a beneficiary under a mortgage or Deed of Trust.

Section 14. Owner shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any lot which is a part of the Properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation. Owner may also be referred to as Unit Owner or Lot Owner.

Section 15. Properties shall mean and refer to that certain real property hereinbefore described, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

Section 16. Unit shall mean and be synonymous with Lot.

ARTICLE II

Property Rights

Section 1. Owners' Easements Enjoyment. Every Owner shall have a right and easement of enjoyment in and to the Common area which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

- a. The right to limit the number of unrelated occupants to four (4) people, and the total number of occupants to Six (6) people; and

- b. The right to the Association to limit the number of guests of members;
- c. The right of the Association to suspend the voting rights and right to use of the recreational facilities by an Owner for any period during which any assessment against this Lot remains unpaid; and for a period not to exceed sixty (60) days for any infraction of its published rules and regulations;
- d. The right of the Association to dedicate or transfer all or part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be deemed necessary by the Developer or agreed to by a two-thirds (2/3) majority of all the members. No such dedication or transfer shall be effective unless an instrument signed by two-thirds (2/3) of each class of members as defined hereinafter agreeing to such dedication or transfer has been recorded; however, until such time as the Declarant has conveyed the Common Areas to the Association, the Declarant may, in its sole discretion, dedicate or transfer Common Area for drainage and utility easements reasonably necessary for the containing development of the Property, and additional sections to be incorporated into the Development; Any dedication of the Common Area, not expressly set out on an approved Subdivision Plat, shall require prior HUD/VA approval as long as there is a Class B Membership.
- e. The right of the Association to impose regulations for the use and enjoyment of the Common Area and improvements thereon, which regulations may further restrict the use of the Common Area.

Section 2. Assignment of Use. Owner may assign, in accordance with the By-Laws, his or her right of enjoyment to the Common Area and facilities to the members of his family, guests, tenants, or contract purchasers who reside on the property.

Section 3. Rights of Enforcement. Any Lot Owner is entitled to enforce the provisions contained in these covenants which are not the exclusive powers of the Owners Association. Any powers which, by their terms, must necessarily be enforced by the Owners Association shall be solely enforced by the said Association.

ARTICLE III

Declarant's Rights

Section 1. The Declarant hereby reserves the right pursuant to the provision of Article XIII hereinafter set forth to annex and subject to these restrictions other real property in order to extend the scheme of this Declaration to other property to be developed and thereby bring such additional properties within the jurisdiction of the Association. Each additional parcel or tract of land, with the improvements thereon, or to be placed thereon, which is subjected to this Declaration shall be designated consecutively as "Section 2", "Section 3", and/or such other similar designations for any additional phases added. Any such annexation shall be subject to HUD/VA approval as long as there is a Class B membership.

Section 2. The rights reserved by Declarant in Section 1 and all annexed Sections include the right to change, alter or redesignate roads, utility and drainage facilities and easements, and to change, alter or redesignate such other present and proposed

amenities or facilities as may in the sole judgment of the Declarant, be necessary or desirable, except that the Declarant shall have no right to change, alter or redesignate the character of the use of the lots within the development which have already been conveyed to third parties.

Section 3. The Developer reserves the right to subject the real property in this subdivision to a contract with Carolina Power and Light Company for the installation of street lighting, which requires a continuing monthly payment to Carolina Power and Light Company by each residential customer.

Section 4. The Developer reserves the absolute right of architectural control as provided for in Article X of this Declaration.

Section 5. Any dedication of the Common Area, not expressly set out on an approved Subdivision Plat, shall require prior HUD/VA approval as long as there is a Class B Membership.

ARTICLE IV

Easements

Section 1. Easements are reserved as necessary in the Common Areas for installation and maintenance of underground utilities and drainage facilities.

Section 2. The Association, acting through its officers, agents, servants, and/or employees shall have the right of unobstructed access at all reasonable times to all properties as may be reasonably necessary to perform the exterior maintenance called for in Article X and XI of this Declaration.

Section 3. Easements are reserved over those portions of the Common Areas, Limited Common Areas and facilities that may be necessary or required to accommodate overhanging eaves or other cantilevered construction which may encroach upon the Common Areas or Limited Common Areas or the air and light space above such Common Areas.

Section 4. Each Lot and all Common Areas and facilities and Limited Common Areas and facilities are hereby subjected to an easement for the repair, maintenance, expansion, reduction, inspection, removal, relocation or other service of or to all gas, electricity, television, telephone, water, plumbing, sewer, utility, drainage, or other common areas and facilities, whether or not the cause of any or all of those activities originates on the unit in which the work must be performed.

Section 5. Each lot, and the property included in the Common Area, shall be subject to an easement for encroachments created by construction, settling and overhangs for all buildings constructed by Declarant. A valid easement for said encroachments and for the maintenance of same, so long as such encroachments stand, shall and does exist. In the event that any structure containing two or more townhouses is partially to totally destroyed and then rebuilt, the owners of the townhouses so affected agree that minor encroachments of parts of the adjacent townhouse units or Common Areas due to construction shall be permitted, and that a valid easement for said encroachment and the maintenance thereof shall exist.

Section 6. Ingress and egress is reserved for pedestrian traffic over, through and across sidewalks, paths, walks, and lanes as the same from time to time may exist upon the Common Areas and facilities; and, for vehicular traffic over, through and across all streets as from time to time may be paved and intended for such purposes, for all lot owners in THE VILLAGE AT CHURCHILL, their guests, families, invitees, lessees, the Association, and the

Declarant, and their successors and assigns. Declarant hereby reserves alienable easements over all streets and Common Areas as necessary to provide access for future development by Declarant or its successors and assigns of any properties adjoining the Project.

Section 7. An easement is hereby granted to all police, fire protection, ambulance and all similar persons, companies or agencies performing emergency services to enter upon the lots and Common Areas in the performance of their duties.

Section 8. In case of any emergency originating in or threatening any unit or lot or the Common Areas and facilities, regardless whether the unit or the lot owner is present at the time of such emergency, the Board of Directors or any other person authorized by it, shall have the right to enter any unit for the purpose of remedying or abating the causes of such emergency and making any other necessary repairs not performed by the unit owner. Any such right of entry shall be immediate. To facilitate such entry, each unit owner shall deposit a key to their unit with the association; further, every tenant shall deposit a key to their unit if changed from that of the unit owner.

Section 9. All easements and rights described herein are easements appurtenant, running with the land, and shall inure to the benefit of and be binding upon undersigned, its successors and assigns, and any owner, purchaser, mortgagee and other person having an interest in said land, or any part or portion thereof, regardless of whether by conveyance or otherwise, or any interest in any mortgage or trust deed or other evidence of obligation; such easements and rights for the benefit of and be binding on the undersigned, its successors and assigns, and any owner, purchaser, mortgagee and other person having an interest in said land, or any part or portion thereof, regardless of whether or not reference to said easement is made in the respective deeds of conveyance, or in any mortgage or trust deed or other evidence of obligation.

Section 10. The Declarant reserves the right to subject the real property in this subdivision to a contract with Carolina Power and Light Company for the installation of street lighting, which contract requires a continuing monthly payment to Carolina Power and Light by each residential customer.

Section 11. Notwithstanding any other vote requirements for encumbrance of the Common Area, in the event any conveyance or encumbrance of Common Area includes property over which any Lot Owner has rights of ingress or egress, such encumbrance shall be subject to approval by the said Lot Owner.

ARTICLE V

Membership and Voting Rights

Section 1. Every Owner of a Lot which is subject to assessment shall be a member of the Association. Membership shall be appurtenant to and may not be separated from the ownership of any Lot which is subject to assessment.

Section 2. The Association shall have two classes of voting memberships

- a. Class "A". Class A members shall be all Owners with the exception of the Declarant and shall be entitled to one vote for each Lot owned. When more than one person holds an interest in the Lot, all such persons shall be members. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any Lot.

b. Class "B". The Class B member shall be the Declarant and shall be entitled to three (3) votes for each unit constructed. The Class B membership shall automatically terminate upon the happening of either of the two following events, which ever occurs earliest:

- (1) Upon the closing of the sale of 75% of all units in all phases, on both a bi-phase basis and an overall basis in the development, or
- (2) five years after the sale of the first unit, or September 1, 2001.

Section 3. Notice and Quorum for Action. There shall be written notice of any meeting called for the purpose of taking any action authorized by this Declaration, which notice shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty percent (60%) of all the votes of the membership shall constitute a quorum. If the required quorum is not present at the first meeting, the required quorum at any subsequent meeting, for such purpose, shall be one-half (1/2) of the required quorum at the preceding meeting. Notice of such subsequent meeting may be given verbally at the meeting of which the required quorum was not present, and may be effective as notice called for herein, if so made. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Notwithstanding anything to the contrary, after control of the Association has been transferred from the Declarant to the Lot Owners the approval of at least 2/3rds of all Lot Owners is required to amend the Covenants or Mortgage, convey or encumber the Common Area.

ARTICLE VI

Covenants For Assessments

Section 1. Creation of the Lien and Personal Obligation of Assessment. The Declarant, for each Lot owned within the Properties, hereby covenants, and each Owner of any Lot by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association:

- a. Annual initial assessments equal to two months assessments as initial working capital, which shall be payable upon closing of the purchase of the Lot; and
- b. Annual assessments or charges, which may be collected monthly, quarterly or bi-annually at the discretion of the Board of Directors; and
- c. Special assessments for capital improvements, such assessments to be established and collected as hereinafter provided; and
- d. any and all fines assessed per the terms of this declaration shall be an assessment on the unit owned by the person so fined.

The annual assessments, special assessments and fine or other levies, together with interest, costs and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the property against which each assessment is made. Each such assessment, together with interest, costs and reasonable attorney's fees, shall also be the personal obligation of the person who was

the Owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the residents in the Properties and for the improvements and maintenance of the Common Area, including but not limited to the following:

a. Maintenance of the roads, streets and walkways constructed within the development to the standard of maintenance which would be required by the State of North Carolina before it would accept such roads, for maintenance; provided that this provision does not require that the width of the road rights of way be the width required as set forth before such roads would be accepted by the State of North Carolina for maintenance. This purpose shall automatically terminate upon such roads and streets being taken over by the State of North Carolina, or similar entity for maintenance; however, provision shall continue for maintenance of walkways, sidewalks, and parking areas within a development.

b. Payment of all water and sewer bills for the units and Common Areas the exterior and structure of the townhouses situated on the properties, and to pay the taxes and other municipal charges or fees assessed on the Common Area. Until such time as the maintenance roads and streets are taken over by the North Carolina Department of Transportation, the maintenance of them shall be funded by the assessments provided for herein.

c. Maintenance of the exterior of the townhouses situated on the properties, as more particularly defined in Article XI of the Declaration.

d. Payment of taxes and other municipal charges and fees assessed on the Common Areas.

e. Maintenance of all drainage easements, water lines and sewer lines located in the Common Area.

f. To keep all amenities in the Common Area clean and free from debris, and to maintain all amenities in an orderly condition. Further, to maintain the landscaping in accordance with the highest standards for private residential communities, including any necessary removal and replacement of landscaping.

g. To provide garbage removal services for all lots; Declarant reserves the right to enter contracts for the removal of trash and garbage for all such lots in the development, which contracts can call for payments for such service either directly for the Lot Owner, or by the Lot Owners Association; any such contract shall have a maximum duration of three years.

h. To pay the premiums on all insurance carried by the Owners Association as required by this Declaration.

i. To pay all legal, accounting and other professional fees, incurred by the association in carrying out its duties as set forth herein or in the Bylaws or Rules and Regulations.

j. To accumulate and maintain and a Contingency Reserve Fund for unanticipated expenses and capital improvement or repair to the Units or Common Area.

Section 3. Maximum Annual Assessment. Until January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment shall be One Thousand One Hundred Dollars (\$1,100.00) per Lot.

- a. From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased each year not more than five percent (5%) above the maximum assessment for the previous year without a vote of the membership.
- b. From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased above five percent (5%) by a vote of two-thirds (2/3) of all members who are voting in person or by proxy, at a meeting duly called for this purpose.
- c. The Board of Directors may fix the initial assessment provided for above at an amount not in excess of the maximum, provided that the Board of Directors may increase the amount of the initial annual assessment to a maximum of One Thousand Three Hundred Dollars (\$1,300.00) per Lot notwithstanding the provisions of subparagraphs a and b above, and thereafter the limitations set forth in said subparagraphs shall apply to any annual increase.

Section 4. Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the roads and Common Area, including maintenance of water or sewer lines and other elements of the water or sewer system as required by government permits or as needed, and to fixtures, and personal property related thereto.

Section 5. Insurance. It shall be the duty of each Unit Owner to obtain, maintain in effect and pay the premiums for casualty and liability insurance upon their individual unit.

All insurance policies must contain provisions generally as follows:

- a. Amount and Scope of Insurance. All insurance policies upon the Units shall be obtained by the Unit Owner and shall contain insurance against (1) Loss or damages by fire, flood, or other hazards normally insured against, and (2) such other risks, including liability insurance, as from time to time shall be customarily required by institutional Mortgage Lenders or Investors for units similar in construction, location and use.
- b. Insurance Provisions. The Owners shall make diligent efforts to assure that said insurance policies provide for the following:
 - (1) A waiver of subrogation by the insurer as to any claims against other Lot Owners, the Association, any officer, director, agent or employee of the Association, the Lot owner and their employees, agents, tenants and invitees.
 - (2) A waiver by the insurer of its right to repair and reconstruct instead of paying cash.
 - (3) Coverage may not be cancelled or substantially modified (including cancellation for nonpayment of premium) without at least thirty

days prior written notice to the named insured, all mortgagees and the Association.

- (4) Coverage will not be prejudiced by act or neglect of the Lot Owners when said act or neglect is not within the control of the Association, or by any failure of the Association to comply with any warranty or condition regarding any portion of the property over which the Association has no control.
 - (5) The policy on the property cannot be cancelled, invalidated or suspended on account of the conduct of any one or more other individual Lot Owners.
 - (6) The policy on the property cannot be cancelled, invalidated or suspended on account of the conduct of any officer or employee of the Board of Directors without prior demand in writing that the Board of Directors cure the defect, and the allowance of a reasonable time thereafter within which the defect may be cured by the Association, any Lot Owner or any Mortgagee.
 - (7) All policies shall be for 100% replacement value, and shall contain standard inflation increase coverage provisions.
- c. Premiums. All insurance policy premiums on individual units shall be paid by the Unit Owner directly to their insurer. Any deductibles payable under said policy shall also be paid directly by the Unit Owner to the insurer. In the event any Unit Owner fails or refuses to pay insurance premiums or deductibles when due, the Association may pay said premium or deductible and levy against the non-paying Unit Owner an Insurance Assessment which shall be an amount due as those amounts provided for under Article VI Section 2, above, and shall be a lien upon the unit until paid in full. The Association may add the additional assessment to the monthly assessment charged to the said non-paying Unit Owner. The amount of the said assessment may include not only the actual cost of the premiums, and any late payment fees, the cost of the deductibles, but also an administrative charge payable to the Association for handling the insurance on the Owners behalf.
- d. Proceeds. All insurance policies purchased pursuant to these provisions shall provide that the Association shall be a loss payee and that all proceeds thereof shall be payable to the Board of Directors as Insurance Trustee or to such attorney-in-fact or institution with trust powers as may be approved by the Board of Directors.
- e. Policies. All insurance policies shall be with a company or companies permitted to do business in the State of North Carolina and holding a rating of "B" or better by the current issue of Best's Insurance Reports. All insurance policies shall be written for the benefit of the Association and the Lot Owners and their mortgagees as their respective interests may appear, and shall provide that all proceeds thereof shall be payable to the Board of Directors; duplicates of said policies and

endorsements and all renewals thereof, or certificates thereof, together with proof of payment of premiums, shall be delivered to the Association at least ten (10) days prior to the expiration date with respect to the then current policies. Duplicates shall also be obtained and issued to each mortgagee, if any, upon request of such mortgagee at any time.

Section 6. Distribution of Insurance Proceeds. Proceeds of insurance policies shall be distributed to or for the benefit of the beneficial owners in the following manner:

- a. Expenses of Trust. All reasonable expenses of the Insurance Trustee shall be first paid or provision made therefor.
- b. Reconstruction or Repair. The remaining proceeds shall be used to defray the cost of repairing the damage or reconstruction for which the proceeds are paid. Any proceeds remaining after defraying such cost shall be distributed to the beneficial owners, including lienholders of record, or retained by the Association for such Common Expenses or purposes as the Board shall determine. Upon the agreement of 100% of Lot Owners in any damaged building, the building may not be rebuilt; however, the Insurance Trustee is authorized to demolish the remainder of the building, clear the lots of all debris, and place, or return, the lot and section upon which the building was located to a safe and attractive condition. In the event any building is not rebuilt, all remaining insurance proceeds shall be used first to pay off all liens or encumbrances upon the units, then for clean up costs, as provided for above, then Insurance Trustee expenses, and the remainder to be divided among the Unit Owners as directed by the Board of Directors.

Section 7. The Board of Directors of the Association shall obtain, maintain and pay for such other insurance coverage on the Common Areas and Facilities as is normally required by institutional mortgage companies or investors for projects similar in construction, location and use. The Board of Directors shall make its best efforts to assure that there is no coverage "gap" which would result in a loss to the Association, or Lot Owners in the event of damage or destruction to the Common Area, or any improvements located thereon.

Section 8. Notice and Quorum for Any Action Authorized Under Sections 3 and 4. Written notice of any meeting called for the purpose of taking any action authorized under Section 3 and 4 shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty percent (60%) of all the votes of the membership shall constitute a quorum. If the required quorum is not present at the first meeting, the required quorum at any subsequent meeting, for such purpose, shall be one-half (1/2) of the required quorum at the preceding meeting. Notice of such subsequent meeting may be given verbally at the meeting of which the required quorum was not present, and may be effective as notice called for herein, if so made. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 9. Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all Lots and may be collected on a monthly or quarterly basis, as determined by the Declarant or the Board of Directors. Notwithstanding the

provision for uniform assessments, if a lot is located in a flood hazard area, that lots assessment may be higher to accommodate flood insurance on the improvements located thereon, as shall be determined at the sole discretion of the Declarant, or the Board of Directors.

Section 10. Date of Commencement of Annual Assessments and Due Dates. The annual assessments provided for herein shall commence as to each Lot on the first day of the month following the issuance of a certificate of occupancy for such lot. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors and the Board of Directors shall have the authority to require the assessments to be paid in pro rata monthly installments. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid.

Section 11. Effect of Nonpayment of Assessments and Remedies of the Association. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of Eighteen Percent (18%) per annum. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the property. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his Lot.

Section 12. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which become due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

Section 13. Working Capital Assessment. At the time title is conveyed to an Owner, the said Owner shall contribute to the Association as a working capital reserve an amount equal to a two months estimated Common Expense Assessment. Such funds are non-refundable, and shall be used for initial operating and capital expenses of the Association, such as pre-paid insurance, supplies, and the Common Areas and facilities, furnishings, and equipment, etc. Amounts paid into the working capital fund are not to be considered as advance payment of regular assessments. Working capital funds shall be transferred to and become part of the general funds of the Association.

Section 14. Rights of Eligible Mortgage Holders. To the extent permitted by law, an eligible mortgage holder upon written request to the Association, identifying the name and address of the holder, will be entitled to timely written notice of:

- a. Any condemnation, loss or casualty loss which affects a material portion of the project or any lots on which there is a mortgage held by such eligible mortgage holder.
- b. Any delinquency in payment of assessments or charges owned by an owner of the Lot subject to a first mortgage held by such Eligible Holder, which remains uncured for a period of sixty days.

- c. Any lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association.
- d. Any proposed action which would require the consent of a specified percentage of Eligible Mortgage Holders.
- e. In addition to the foregoing rights, the Eligible Mortgage Holders shall be afforded the following rights subject to the extent permitted by law and as allowed by the North Carolina General Statutes as they now exist or as may be amended from time to time.
 - (1) Any election to terminate the legal status of the project after substantial distribution or a substantial taking in condemnation of the project property must require the approval of at least 51% of the votes of the unit estates subject to Eligible Mortgage Holders.
 - (2) Unless otherwise provided in the Declaration or By-Laws, no reallocation of interest in the Common Areas resulting from a partial condemnation or partial destruction of the project may be affected without the prior approval of Eligible Holders holding mortgages on all remaining unit estates whether existing whole or in part, and which have at least 51% of the votes of such remaining unit estates subject to Eligible Holders of mortgages.

ARTICLE VII

Fidelity Bonds

Section 1. General. The Association shall maintain blanket fidelity bonds for all officers, directors, employees and all other persons handling or responsible for funds of the Association. If the Association shall delegate some or all the responsibility for the handling of its fund to a management agent, such fidelity bonds shall be maintained by such management agent for its offices, employees and agents handling or responsible for funds of or administered on behalf of the Association.

Section 2. Amount of Coverage. The total amount of fidelity bond coverage required shall be based upon best business judgment and shall not be less than the estimated maximum of funds, including reserve funds, in the custody of the Association or the management agent, as the case may be, at any given time during the term of each bond. However, in no event may the aggregate amount of such bonds be less than a sum equal to three months aggregate assessments on all units plus reserve funds.

Section 3. Other Requirements. Fidelity bonds required herein must meet the following requirements:

- a. Fidelity bonds shall name the Association as an obligee.
- b. The bonds shall be contained waivers by the issuers of the bonds of all defenses upon the exclusion of the persons serving without compensation from the definition of "employees", or similar terms or expressions.
- c. The premiums on all bonds required herein for the Association (except for premiums on fidelity bonds maintained by a management agent for its officers,

employees and agents) shall be paid by the Association as a common expense.

- d. The bonds shall provide that they may not be cancelled or substantially modified (including cancellation for nonpayment of premium) without at least ten (10) days prior written notice to the Association, to any insurance trustee and to each Eligible Mortgage Holder.

ARTICLE VIII

Recommendation of Rental Agents

Section 1. Rental Agents. At the annual meeting of the Association, or such other meeting of the Association as is designated by the Board, the Board may, upon notice to the owners, recommend for the approval of the Association one or more agents for the rental of units during the forthcoming year. Prior to recommending agents for the approval of the Association, the Board shall have authority to require any agent desiring to qualify as an approved agent to submit a copy of the proposed rental agreement to be used by such agent, together with such other information as the Board may reasonably require. The Board may require, as a condition of approval, that all rental agreements incorporate such standard procedures as may be required to minimize problems of security, maintenance, quality and operation of the common areas and facilities of the property. Neither the Association nor the Board shall have, or attempt to impose as a condition of approval, any control over the commission schedule, or fees charged by any approved rental agent, or the permissible period of rental, all of which shall be for the sole determination of the approved rental agent and any owner selecting such agent. Each Owner shall have the absolute right to enter into any direct rental, lease or sale arrangement with renters, lessees and purchasers which shall be consistent with the Declaration, By-Laws of the Association and such other regulations as may from time to time be promulgated by the Association and/or Board. Nothing herein shall be construed as creating or authorizing any rental pooling or as requiring the rental of a unit by an Owner or as restricting the Owner's use of his unit. If any court of law, governmental regulatory body having appropriate jurisdiction or approved legal counsel to the Association determines that any portion of this provision is unlawful or would require registration of the offering of any lot as a security, then such portion of this provision shall be invalid until such requirement is eliminated.

ARTICLE IX

Architectural Control

Section 1. No building, fence, wall or other structure shall be commenced, erected, or maintained upon the Properties, nor shall any exterior addition to, change to, or alteration thereof be made until the plans and specifications showing the nature, kind, shape, heights, materials and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Board or Directors of the Association, or by an architectural committee composed of three (3) or more representative appointed by the Board. In the event said Board, or its designated committee, fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, approval will not be required and this Article will be deemed to have been fully complied with. Until such time as all units have been conveyed to third party owners, the Declarant shall retain sole and absolute over approval over any such additions, changes or alterations.

Section 2. The Association, or such Architectural Committee, shall approve all exterior appearance changes, including but not limited to the colors to which each building and its doors, window frames, shutters and other parts may be painted.

Section 3. There shall be no satellite dishes or antennas, clothes lines, external gas tanks, or other such facility or utility without the express written approval of the Board or the said Architectural Committee.

Section 4. All duties and responsibilities conferred upon the Board or the Architectural Control Committee by this Declaration or the Bylaws of the Association may be exercised and performed by the Declarant or its Design at its discretion, so long as Declarant shall own any lot in the properties or any additions annexed thereto by Supplemental Declaration or Amendment to this Declaration.

Section 5. Until such time as the last unit in the last section, or phase, is sold, Declarant shall have all architectural control provided for herein.

ARTICLE X

Party Walls

Section 1. General Rules of Law To Apply. Each wall which is built as a part of the original construction of the townhouses upon the Properties and placed on the dividing line between the Lots shall constitute a party wall, and, to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and of liability for property damage due to negligence or willful acts or omissions shall apply thereto.

Section 2. Sharing or Repair and Maintenance. The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in proportion to such use.

Section 3. Destruction by Fire or Other Casualty. If a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it, and if the other Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omission.

Section 4. Weatherproofing. Notwithstanding any other provision of this Article, an Owner who by his negligent or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such element.

Section 5. Right to Contribution Runs With Land. The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

Section 6. Arbitration. In the event of any dispute arising concerning a party wall, or under the provisions of this Article, each party shall choose one arbitrator, and such arbitrators shall choose one additional arbitrator, and the decisions shall be by a majority of all the arbitrators.

ARTICLE XI

Exterior Maintenance

In addition to maintenance upon the Common Area, the Association shall provide exterior maintenance upon each Lot which

is subject to assessment hereunder as follows: paint, repair, replace and care of roofs, gutters, downspouts, exterior building surfaces, decks, trees, shrubs, grass, walks and other exterior improvements. Such exterior maintenance shall not include glass surfaces, windows and doors, except for normal exterior painting.

In the event that the need for maintenance, repair or replacement is caused through the willful, or negligent act of the Owner, Owner's family, guests or invitees, or is caused by lightning, windstorm, hail, explosion, riot, riot attending a strike, civil commotion, aircrafts, vehicles, and smoke, or any insured event, as the foregoing are defined and explained in North Carolina Standard Fire and Extended Coverage Insurance Policies, the cost of such maintenance, replacement, or repairs, shall be added to and become a part of the assessment to which such Lot is subject.

ARTICLE XII

Use Restriction

Section 1. Land Use and Building Type. All Lots shall be used for residential purposes except that so long as the Declarant or its design shall retain ownership of any lot, it may utilize any Unit or Lot for sales or rental, offices, models or other usage for the purpose of selling or renting lots within said project including the right to place "For Sale" or "For Rent" signs on lots. The Declarant may assign this limited commercial usage right to any other person or entities as it may choose; provided, however, that when all Lots in all phases have been sold, this right of commercial usage by the Declarant, its design, its successors and assigns shall immediately cease. Co-ownership of Lots shall not be prohibited. No building shall be erected, altered, placed or permitted to remain on any lot other than one single family townhouse dwelling not to exceed three stories in height. Any building erected, altered, placed or permitted to remain on any lot shall be subject to the provisions of Article VIII of this Declaration of Covenants, Conditions and Restrictions relating to Architectural Control.

Section 2. Nuisances. No noxious or offensive activity shall be carried on upon any lot, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood.

Section 3. Junk Vehicles. No inoperable vehicle, or vehicle without current registration and insurance, will be permitted on the premises. The Association shall have the right to have all such vehicles towed away and stored at the Owner's expense.

Section 4. Outside Furniture. No furniture shall be permitted on the front porch except porch furniture and plants. Porch furniture shall also be permitted on the rear deck of each unit. All grills and accessories must be kept in the storage areas provided when not in use.

Section 5. For Sale Signs Prohibited. Except as provided in Section 1 above, no "For Sale" or "For Rent" signs or any other signs shall be permitted or displayed on any lot or unit windows, or in the Common Areas and facilities.

Section 6. Temporary Structures. No structure of a temporary character, trailer basement, tent, shack, garage, barn or other outbuilding shall be used on any lot, or the common area, at any time as a residence either temporarily or permanently.

Section 7. Recreational Vehicles. No boat, motor boat, camper, trailer, motor or mobile homes, or similar type vehicle