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DECLARATION OF COVENANTS AND EASEMENTS

FOR

BLAKENEY

Prepared by / upon recording, please return to:

**Crosland Land Company
141 Scaleybark Road
Charlotte, NC 28209**

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DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS
FOR
BLAKENEY

THIS DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS is made this 31 day of October, 2001, by Blakeney Heath Limited Partnership, a North Carolina limited partnership ("**Declarant**").

Article I Creation of the Community

1.1. Purpose and Intent.

Declarant, as the owner of the real property described in Exhibit "A," intends by this Declaration to establish a general plan of development for the community known as Blakeney. An integral part of the development plan is the creation of Blakeney Association, Inc., to own, operate and/or maintain various common areas and community improvements within Blakeney and to administer this Declaration.

1.2. Binding Effect.

All property described in Exhibit "A," and any additional property which is made a part of Blakeney in the future by recording one or more Supplemental Declarations, shall be owned, conveyed and used subject to all of the provisions of this Declaration, which shall run with the title to such property. This Declaration shall be binding upon all Persons having any right, title, or interest in any portion of Blakeney, their heirs, successors, successors-in-title, and assigns.

This Declaration, as it may be amended, is intended to have perpetual duration, subject to the right of the Owners to terminate this Declaration in accordance with the procedures set forth in Article XI.

1.3. Governing Documents.

The Governing Documents for Blakeney consist of:

- this Declaration and such Supplemental Declarations as may be recorded from time to time; and
- the Association's Articles of Incorporation and By-Laws; and
- such rules governing the Area of Common Responsibility and such resolutions as the Association's Board of Directors may adopt;

all as they may be amended. In the event of a conflict between or among any of the Governing Documents, the documents shall be given priority in the order listed above.

Portions of Blakeney are subject to additional covenants, restrictions and easements, and subject to the jurisdiction of an owners association with its own governance documents and policies. If there is a conflict between the Governing Documents and any such additional covenants or restrictions, or between the Governing Documents and the governance documents or policies of any such owners association, the Governing Documents shall control; however, if one document is simply more restrictive than another, the more restrictive shall control.

Every Owner, tenant, and occupant of property within Blakeney, and their respective guests and invitees, shall comply with the Governing Documents. The Association, the Declarant, and every Owner shall have the right to take legal action to enforce the Governing Documents. The Association shall have the specific enforcement powers and remedies described in Section 4.7 and elsewhere in the Governing Documents.

If any court should determine that any provision of this Declaration is invalid, or invalid as applied in a particular instance, such determination shall not affect the validity of other provisions or applications of such provision.

Article II Concepts and Definitions

2.1. Defined Terms.

The terms used in the Governing Documents shall generally be given their natural, commonly accepted definitions unless otherwise specified. Capitalized terms shall be defined as set forth below.

"Area of Common Responsibility": The Common Area, together with such other areas, if any, for which the Association has or assumes responsibility pursuant to the terms of this Declaration, any Supplemental Declaration, or other applicable covenants, contracts, or agreements.

"Articles": the Articles of Incorporation of Blakeney Association, Inc., filed with the Office of the Secretary of State, State of North Carolina, as they may be amended.

"Association": Blakeney Association, Inc., a North Carolina non-profit corporation, its successors or assigns.

"Blakeney": The real property described on Exhibit "A" together with such additional property as is submitted to this Declaration pursuant to Article VI.

"Board of Directors" or "Board": The body responsible for administration of the Association, selected as provided in the By-Laws and generally serving the same role as the board of directors under North Carolina corporate law.

"Builder": A Person engaged in the business of constructing dwellings or commercial structures for resale who acquires an unimproved Unit for the purpose of constructing a dwelling or commercial structure(s) thereon for resale in the ordinary course of such Builder's business.

"By-Laws": The By-Laws of Blakeney Association, Inc., as they may be amended. A copy of the initial By-Laws is attached to this Declaration as Exhibit "D."

"Class "B" Control Period": The period of time during which the Declarant, as the Class "B" Member, is entitled to appoint a majority of the members of the Board, as provided in Article III of the By-Laws. The Class "B" Control Period shall terminate not later than 90 days after the first to occur of the following:

(a) the date that (i) Declarant has conveyed to a Person other than a successor Declarant 75% of the total acreage of the property described in the Master Plan, and (ii) 75% of the total number of Residential Units permitted by applicable zoning for the property described in the Master Plan have been issued certificates of occupancy and have been conveyed to Class "A" Members other than Builders; or

(b) 20 years from the date of recording of this Declaration; or

(c) such earlier date as the Class "B" Member, in its sole discretion, executes and records a written notice voluntarily terminating the Class "B" Control Period.

Temporary suspension of the Class "B" Membership pursuant to Section 3.2 shall not affect the Class "B" Control Period.

"Commercial Unit": A Unit other than a Residential Unit. The term shall include, without limitation, any Unit developed and operated, or intended for development and operation, as multi-family rental apartments.

"Common Area": All real and personal property, including easements, which the Association owns, leases or otherwise holds possessory or use rights in for the common use and enjoyment of the Owners and occupants of property in Blakeney.

"Common Expenses": The actual and estimated expenses which the Association incurs, or expects to incur, in carrying out its responsibilities and exercising its authority under the Governing Documents, including any reasonable reserve, all as the Board may find necessary or appropriate pursuant to the Governing Documents. Common Expenses shall not include any expenses incurred during the Class "B" Control Period for initial development or other original construction costs unless approved by Owners Associations having jurisdiction over Units to which a majority of the total Class "A" votes in the Association are allocated. Payments due under leases of capital improvements such as street lights shall not be considered an initial development expense or original construction cost.

"Community-Wide Standard": The standard of conduct, maintenance, or other activity generally prevailing in Blakeney. Declarant initially shall establish such standard and it may contain both objective and subjective elements. The Community-Wide Standard may evolve as development progresses and as the needs and desires within Blakeney change.

"Declarant": Blakeney Heath Limited Partnership, a North Carolina limited partnership, or any successor or assign who takes title to any portion of the property described in Exhibits "A" or "B" for the purpose of development and/or sale and who the immediately preceding Declarant designates as Declarant in a recorded instrument.

"Declarant Affiliate": Any Person that controls, is controlled by, or is under common control with the Declarant, and any Person that is an owner, a member, a partner, or a shareholder of the Declarant.

"Development and Sale Period": The period of time during which Declarant or any Declarant Affiliate owns property subject to this Declaration or Declarant holds an unexpired option to unilaterally expand the Community pursuant to Section 6.1.

"General Assessment": Assessments levied to fund Common Expenses, as determined in accordance with Section 5.2.

"Governing Documents": A collective term referring to this Declaration and any applicable Supplemental Declaration, the By-Laws, the Articles, Association rules, and Board resolutions, all as they may be amended.

"Master Plan": The land plan for the development of Blakeney prepared by LandDesign, Inc. and approved by Mecklenburg County, North Carolina, as it may be supplemented or amended, which includes all of the property described in Exhibit "A" and all or a portion of the property described in Exhibit "B." Inclusion of property on the Master Plan shall not, under any circumstances, obligate Declarant to subject such property to this Declaration, nor shall the omission of property described in Exhibit "B" from the Master Plan bar its later submission to this Declaration as provided in Article VI.

"Member": A Person subject to membership in the Association pursuant to Section 3.2.

"Mortgage": A mortgage, a security deed, a deed of trust, or any other form of security instrument affecting title to any Unit. The term "**Mortgagee**" shall refer to a beneficiary or holder of a Mortgage.

"Owners Association": A condominium association or other owners association, if any, having jurisdiction over any portion of Blakeney pursuant to a recorded declaration executed or joined in by Declarant.

"Owner": One or more Persons who hold the record title to any Unit, but excluding in all cases any party holding an interest merely as security for the performance of an obligation. If a

Unit is sold under a recorded contract of sale, and the contract specifically so provides, the purchaser (rather than the fee owner) will be considered the Owner.

"Person": A natural person, a corporation, a partnership, a limited liability company, trust, or any other legal entity.

"Residential Unit": A Unit designated on any recorded plat or restricted by applicable zoning or recorded covenants to development, use and occupancy as an attached or detached residence for a single family. The term shall not include a Unit developed and operated, or intended for development and operation, as multi-family rental apartments.

"Special Assessment": Assessments levied in accordance with Section 5.3.

"Specific Assessment": Assessments levied in accordance with Section 5.4.

"Supplemental Declaration": An instrument recorded pursuant to Article VI which subjects additional property to this Declaration.

"Unit": A portion of Blakeney, whether improved or unimproved, which may be independently owned and conveyed, but excluding any real property owned by the Association or by an Owners Association for the common use and benefit of its members. The term shall refer to the land, if any, which is part of the Unit as well as any improvements thereon. In the case of a structure containing multiple dwellings, each dwelling shall be deemed to be a separate Unit.

A parcel of vacant land under single ownership shall be deemed to be a single Unit until such time as a subdivision plat or condominium instrument is recorded subdividing all or a portion of the parcel. Thereafter, the portion encompassed by such plat or condominium instrument shall contain the number of Units determined as set forth in the preceding paragraph and any remaining portion shall continue to be treated as a single Unit.

Units may be combined or further subdivided, and boundary lines of Units may be changed, only by recording of a plat or other legal instrument further subdividing or resubdividing the parcel of property (which subdivision shall be subject to such other restrictions as may be set forth in applicable covenants). In the absence of recording such a legal instrument, ownership of adjacent Units by the same Owner shall not permit such Units to be treated as a single Unit for purposes of calculating assessments hereunder, notwithstanding that such Units may be improved with a single structure.

2.2. Interpretation of Certain References.

(a) Recording. All references in the Governing Documents to a "recorded" legal instrument, or to recordation or the recording of a legal instrument, shall refer to an instrument filed, or the filing of a legal instrument, in the Office of the Register of Deeds for Mecklenburg County, North Carolina, or such other place designated as the official location for filing documents affecting title to real estate in Mecklenburg County in order to make them a matter of public record.

(b) Consent or Approval. All references in the Governing Documents to "consent" or "approval" shall refer to permission or approval that, unless otherwise expressly qualified in the specific provision, may be granted or withheld in the discretion of the Person whose consent or approval is required.

(c) Discretion and Determinations. All references in the Governing Documents to "discretion" or to the right to "determine" any matter shall refer to the sole and absolute power or right to decide or act and, unless otherwise expressly limited in the Governing Documents, a Person entitled to exercise its discretion or make a determination may do so without regard to the reasonableness of, and without the necessity of justifying, the decision, determination, action or inaction.

Article III The Association and its Members

3.1. Function of Association.

The Association has been established to administer the Area of Common Responsibility in accordance with the Governing Documents.

3.2. Membership.

(a) Classes of Membership. The Association initially shall have two classes of membership, Class "A" and Class "B". Class "A" Members shall be all Owners. The sole Class "B" Member shall be the Declarant. The Class "B" membership shall be temporarily suspended during any period that the Declarant does not own a Unit, subject to automatic reinstatement upon Declarant's acquisition of any Unit or annexation of additional property pursuant to Article VI; however, such temporary suspension shall not suspend, terminate, or otherwise affect the Class "B" Control Period. The Class "B" membership shall terminate upon the earlier of:

(i) the date that (A) Declarant has conveyed to a Person other than a successor Declarant 75% of the total acreage of the property described in the Master Plan, and (B) 75% of the total number of Residential Units permitted by applicable zoning for the property described in the Master Plan have been issued certificates of occupancy and have been conveyed to Class "A" Members other than Builders; or

(ii) 20 years from the date of recording of this Declaration; or

(iii) such earlier date as the Class "B" Member, in its sole discretion, executes and records a written notice voluntarily terminating the Class "B" membership.

Upon termination of the Class "B" Membership, Declarant shall continue to hold a Class "A" Membership for each Unit that it owns.

(b) Automatic Membership; Exercise of Privileges. Every Owner automatically becomes a Member of the Association upon taking title to a Unit and remains a Member as long as the Owner holds title to a Unit. The membership rights of any Owner that is a legal entity may be exercised by any officer, director, partner, trustee or employee whom the Owner designates in writing to the Association.

3.3. Voting.

The voting rights of each class of membership shall be as follows:

(a) Class "A". Each Unit owned by a Class "A" Member is assigned voting rights in accordance with formula described on Exhibit "C". If there is more than one Owner of a Unit, the voting rights shall be exercised as the co-Owners determine among themselves and advise the Secretary of the Association in writing prior to the vote being taken. Absent such advice, any co-Owner may cast the vote, but the vote shall be suspended if more than one co-Owner seeks to exercise it.

(b) Class "B". The Class "B" Member shall not have any specific number of votes relative to the number of Units it owns; rather, the consent of the Class "B" Member shall be required for various actions of the Board, the membership and committees, as specifically provided elsewhere in the Governing Documents. In addition, the Class "B" Member may appoint a majority of the members of the Board of Directors during the Class "B" Control Period, as specified in Article III of the By-Laws. Additional rights of the Class "B" Member are specified in the relevant sections of the Governing Documents. In addition, the Class "B" Member shall have a right to disapprove actions of the Board and committees as provided in the By-Laws.

Article IV Association Powers and Responsibilities

4.1. Acceptance and Control of Association Property.

(a) The Association, through action of its Board, may acquire, hold, lease (as lessor or lessee), operate and dispose of tangible and intangible personal property and real property, subject to the provisions of this Article. The Association may enter into leases, licenses or operating agreements for portions of the Common Area, for such consideration or no consideration as the Board deems appropriate, to permit use of such portions of the Common Area by community organizations and by others, whether nonprofit or for profit, for the provision of goods or services for the general benefit or convenience of owners, occupants and residents of Blakeney.

(b) Declarant, any Declarant Affiliate, and their respective designees may convey to the Association, and the Association shall accept, personal property and fee title, leasehold or other property interests in any real property, improved or unimproved, described in Exhibits "A" or "B." Upon Declarant's written request, the Association shall reconvey to Declarant any unimproved portions of the Common Area which Declarant originally conveyed to the

Association for no consideration, to the extent conveyed by Declarant in error or needed by Declarant to make minor adjustments in property lines.

(c) The Association shall be responsible for management, operation and control of the Common Area, subject to any covenants and restrictions set forth in the deed or other instrument transferring such property to the Association. The Board may adopt, amend and rescind such reasonable rules regulating use of the Common Area and other portions of the Area of Common Responsibility as it deems appropriate, consistent with the Association's rights therein. The Association shall distribute copies of all rules and amendments to each Owners Association at least 30 days prior to the effective date thereof. Each Owners Association shall be responsible for copying and distributing such rules and amendments to its members prior to the effective date.

4.2. Maintenance of Area of Common Responsibility.

The Association shall maintain the Area of Common Responsibility in accordance with the Community-Wide Standard. The Area of Common Responsibility shall include, but need not be limited to:

- (a) all portions of and structures situated on the Common Area; and
- (b) stormwater detention ponds and common drainage structures within Blakeney and any bulkheads or other structures retaining water therein; and
- (c) any landscaping, community signage for the Blakeney community, street lights and sidewalks within the public rights-of-way of Rea Road and the public road constituting the major east-west road bisecting Blakeney or adjacent sidewalk easements, to the extent that they lie within or adjacent to Blakeney and such responsibility is assumed by a governmental body or utility provider (which assumption shall not preclude the Association from providing a higher level of maintenance); and
- (d) such portions of any additional property included within the Area of Common Responsibility as may be dictated by this Declaration, any Supplemental Declaration, or any contract or agreement for maintenance thereof entered into by the Association.

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

The Association shall not be liable for any damage or injury occurring on or arising out of the condition of property that it does not own except to the extent that it has been negligent in the performance of its maintenance responsibilities.

Notwithstanding the above, some portions of the Area of Common Responsibility may consist of open space or conservancy areas intentionally left in a natural or relatively undisturbed state. The level of maintenance that the Association provides to the Area of Common

Responsibility may vary from a high level of landscaping and regular, weekly maintenance to intermittent or no maintenance, depending on the nature and intended use of the particular open space area. Open space or other natural areas may serve as habitats for a variety of native plant, animal, and insect species, and may contain creeks, fallen trees and other naturally occurring conditions, some of which may pose hazards to persons or pets coming in contact with them. Neither the Association nor the Declarant shall have any responsibility for providing maintenance in such areas or taking action to abate such conditions.

The Association shall maintain the facilities and equipment within the Area of Common Responsibility in continuous operation, except for any periods necessary, as determined in the Board's sole discretion, to perform required maintenance or repairs, unless Owners Associations having jurisdiction over Units to which at least 75% of the total Class "A" votes in the Association are allocated and, during the Development and Sale Period, the Declarant, agree in writing to discontinue such operation.

Except as provided above, during the Development and Sale Period the Area of Common Responsibility shall not be reduced without Declarant's prior written approval.

Except as otherwise specifically provided in this Declaration or any applicable Supplemental Declaration, the costs associated with maintenance, repair and replacement of the Area of Common Responsibility shall be a Common Expense, subject to the right of the Association to seek reimbursement from the owner(s) of, or other Persons responsible for, certain portions of the Area of Common Responsibility pursuant to this Declaration, other recorded covenants, or agreements with the owner(s) thereof.

4.3. Condemnation.

If any part of the Common Area shall be taken by any authority having the power of condemnation or eminent domain, each Owner shall be entitled to written notice of such taking or conveyance prior to disbursement of any condemnation award. Any condemnation award shall be payable to the Association and shall be disbursed as follows:

If the taking or conveyance involves a portion of the Common Area on which improvements have been constructed, the Association shall restore or replace such improvements on the remaining land included in the Common Area to the extent available, unless within 60 days after such taking Declarant, during the Development and Sale Period, and Owners of Units to which at least 80% of the total Class "A" votes in the Association are allocated otherwise agree. Any such construction shall be in accordance with plans approved by the Board. The provisions of Section 4.6(c) regarding funds for restoring improvements shall apply.

If the taking or conveyance does not involve any improvements on the Common Area, or if a decision is made not to repair or restore, or if net funds remain after any such restoration or replacement is complete, then such award or net funds shall be treated in the same manner as if proceeds from the sale of Common Area pursuant to Section 4.5.

4.4. Partition.

Except as permitted in this Declaration, the Common Area shall remain undivided, and no Person shall bring any action seeking the partition of any portion of the Common Area without the written consent of all Members. This Section shall not prohibit the Board from acquiring and disposing of tangible personal property nor from acquiring and disposing of real property which may or may not be subject to this Declaration, subject to such approval as may be required under Section 4.5.

4.5. Mortgaging, Conveyance or Dedication of Common Area.

The Association may dedicate portions of the Common Area to Mecklenburg County, North Carolina, or to any other local, state, or federal governmental or quasi-governmental entity, or may subject Common Area to a security interest, or may transfer or convey Common Area upon the written direction of Owners of Units to which at least 80% of the total Class "A" votes in the Association are allocated and the Declarant, during the Development and Sale Period. In addition, the approval requirements of Section 9.4 shall be met, if applicable.

The proceeds from the sale or financing of Common Area shall be an asset of the Association to be used as the Board determines.

No sale or encumbrance of Common Area may deprive any Unit of rights of access or support.

4.6. Insurance.

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

(i) Blanket property insurance covering "risks of direct physical loss" on a "special form" basis (or comparable coverage by whatever name denominated) for all insurable improvements on the Common Area and within the Area of Common Responsibility to the extent that Association has responsibility in the event of a casualty, regardless of ownership. If such coverage is not generally available at reasonable cost, then "broad form" coverage may be substituted. All property insurance policies obtained by the Association shall have policy limits sufficient to cover the full replacement cost of the insured improvements under current building ordinances and codes; and

(ii) Commercial general liability insurance on the Area of Common Responsibility, insuring the Association and its Members for damage or injury caused by the negligence of the Association or any of its Members, employees, agents, or contractors while acting on its behalf. If generally available at reasonable cost, such coverage (including primary and any umbrella coverage) shall have a limit of at least \$1,000,000.00 per occurrence with respect to bodily injury, personal injury, and property damage; provided, should additional

coverage and higher limits be available at reasonable cost which a reasonably prudent person would obtain, the Association shall obtain such additional coverages or limits; and

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

(iv) Directors and officers liability coverage; and

(v) Commercial crime insurance, including fidelity insurance covering all Persons responsible for handling Association funds in an amount determined in the Board's business judgment. Fidelity insurance policies shall contain a waiver of all defenses based upon the exclusion of Persons serving without compensation; and

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

Premiums for all insurance on the Area of Common Responsibility shall be Common Expenses.

(b) Policy Requirements. The Association shall arrange for a periodic review of the sufficiency of its insurance coverage by one or more qualified Persons, at least one of whom must be familiar with insurable replacement costs in the Charlotte, North Carolina area. All Association policies shall provide for a certificate of insurance to be furnished to the Association and, upon request, to each Member.

The policies may contain a reasonable deductible and the amount thereof shall not be subtracted from the face amount of the policy in determining whether the policy limits satisfy the requirements of Section 4.6(a). In the event of an insured loss, the deductible shall be a Common Expense; however, if the Board reasonably determines, after notice and an opportunity to be heard in accordance with the By-Laws, that the loss is the result of the negligence or willful misconduct of one or more Owners, their guests, invitees, or lessees, then the Board may assess the full amount of such deductible against such Owner(s) and their Units as a Specific Assessment.

All insurance coverage obtained by the Board shall:

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

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

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

(iv) contain an inflation guard endorsement; and

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

(vi) provide that each Member is an insured person under the policy with respect to liability arising out of such Member's interest in the Common Area as a Member of the Association (provided, this provision shall not be construed as giving a Member any direct ownership interest in the Common Area other than that of a Member); and

(vii) provide a waiver of subrogation under the policy against any Owner, or occupant of any Unit; and

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

(ix) include an endorsement precluding cancellation, invalidation, or condition to recovery under the policy on account of any act or omission of any one or more individual Owners or occupants of Units, unless such Owner is acting within the scope of its authority on behalf of the Association.

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

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

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

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

(iv) a cross liability provision; and

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

(c) Restoring Damaged Improvements. In the event of damage to or destruction of Common Area or other property which the Association is obligated to insure, the Board or its

duly authorized agent shall file and adjust all insurance claims and obtain reliable and detailed estimates of the cost of repairing or restoring the property to substantially the condition in which it existed prior to the damage, allowing for changes or improvements necessitated by changes in applicable building codes.

The Association shall cause damaged improvements on the Common Area to be repaired or reconstructed unless a decision not to repair or reconstruct is approved within 60 days after the loss or damage by Owners of Units to which at least 80% of the Class "A" votes in the Association are allocated, and during the Development and Sale Period, by the Declarant. If either the insurance proceeds or estimates of the loss, or both, are not available to the Association within such 60-day period, then the period shall be extended until such funds or information are available. However, such extension shall not exceed 60 additional days. No Mortgagee shall have the right to participate in the determination of whether the damage or destruction to the Common Area shall be repaired or reconstructed.

If a decision is made not to restore the damaged improvements and no alternative improvements are authorized, the affected property shall be cleared of all debris and ruins and thereafter shall be maintained by the Association in a neat and attractive, landscaped condition consistent with the Community-Wide Standard.

Any insurance proceeds remaining after paying the costs of repair or reconstruction, or after such settlement as is necessary and appropriate, shall be distributed to all Owners or their mortgagees, as their interests may appear, in proportion to the assessment liability of each under Article V.

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

4.7. Compliance and Enforcement.

(a) Every Owner and occupant of a Unit shall comply with the Governing Documents. The Board may impose sanctions for violation of the Governing Documents as set forth in this Section 4.7 and elsewhere in the Governing Documents.

(b) The Board may impose the following sanctions only after notice and a hearing in accordance with the procedures set forth in Article VIII of the By-Laws:

(i) imposing reasonable monetary fines which shall constitute a lien upon the violator's Unit (In the event that any occupant, guest or invitee of a Unit violates the Governing Documents and a fine is imposed, the fine shall first be assessed against the violator; provided, however, if the fine is not paid by the violator within the time period set by the Board, the Owner shall pay the fine upon notice from the Board); and

(ii) suspending the vote attributable to a violating Owner's Unit and/or the privilege of using any facilities within the Common Area, during any period that the assessments

levied on such Owner's Unit are more than 30 days delinquent or for a reasonable period for other violation of or failure to comply with the Governing Documents; and

(iii) levying Specific Assessments pursuant to Section 5.4 to cover costs which the Association incurs as a consequence of the conduct of an Owner or occupant of a Unit, their guests or invitees.

(c) In addition, the Association, acting through the Board or its designee, may bring suit at law or in equity to enforce the Governing Documents or collect amounts due hereunder without the necessity of compliance with the procedures set forth in Article VIII of the By-Laws.

(d) All remedies set forth in the Governing Documents shall be cumulative of any remedies available at law or in equity. In any action to enforce the Governing Documents, if the Association prevails, it shall be entitled to recover all costs, including, without limitation, attorneys fees and court costs, reasonably incurred in such action.

(e) The decision to pursue enforcement action in any particular case shall be left to the Board's discretion, except that the Board shall not be arbitrary or capricious in taking enforcement action. Such a decision shall not be construed a waiver of the right of the Association to enforce such provision at a later time under other circumstances or preclude the Association from enforcing any other provision of the Governing Documents.

(f) The Association, by contract or other agreement, may enforce applicable county ordinances and permit Mecklenburg County to enforce ordinances within Blakeney for the benefit of the Association and its Members.

4.8. Implied Rights; Board Authority.

The Association may exercise any right or privilege given to it expressly by the Governing Documents, or reasonably implied from or reasonably necessary to effectuate any such right or privilege. All rights and powers of the Association may be exercised by the Board without a vote of the membership except to the extent that the Governing Documents or North Carolina law specifically require a vote of the membership.

The Board may institute, defend, settle, or intervene on behalf of the Association in mediation, binding or non-binding arbitration, litigation, or administrative proceedings in matters pertaining to the Area of Common Responsibility, enforcement of the Governing Documents, or any other civil claim or action. However, the Governing Documents shall not be construed as creating any independent legal duty to institute litigation on behalf of or in the name of the Association or its Members.

In exercising the rights and powers of the Association, making decisions on behalf of the Association, and conducting the Association's affairs, Board members shall be subject to, and their actions shall be judged in accordance with, the standards set forth in Article VI of the By-Laws.

4.9. Relationships with Other Properties.

The Association may enter into contractual agreements or covenants to share costs with any Owner or Owners Association to contribute funds for, among other things, shared or mutually beneficial property or services and/or a higher level of maintenance of any portion of the Area of Common Responsibility.

4.10. Use of Technology.

The Association may, as a Common Expense, provide for or offer services that make use of technological opportunities to facilitate the goals and fulfill the responsibilities of the Association. For example, to the extent North Carolina law permits, and unless otherwise specifically prohibited in the Governing Documents, the Association may send required notices by electronic means; hold Board or Association meetings and permit attendance and voting by electronic means; collect assessments by electronic means; sponsor a community cable television channel; create and maintain a community intranet or Internet homepage; and maintain an "online" newsletter or bulletin board.

4.11. Safety and Security.

The Association may, but shall not be obligated to, maintain or support certain activities within Blakeney designed to enhance the level of safety or security that each person provides for himself and his property. However, no representation or warranty is made that any systems or measures cannot be compromised or circumvented, nor that any such systems or security measures undertaken will in all cases prevent loss or provide the detection or protection for which the system is designed or intended. Neither the Association, the Declarant, any Owners Association, nor the members, partners, affiliates, officers, directors, agents or employees of any of the foregoing, shall in any way be considered insurers or guarantors of safety or security within Blakeney, nor shall they be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken.

Each Owner and occupant of a Unit, and their respective guests and invitees, shall be responsible for their own personal safety and the security of their property in Blakeney and each of them assumes all risks of personal injury and loss or damage to their property, including Units and their contents, resulting from acts of third parties.

Article V Association Finances

5.1. Authority to Levy Assessments for Association Expenses.

(a) Purposes and Types. There are hereby created, and the Association is hereby authorized to levy against each Unit, assessments for expenses incurred or anticipated to be incurred by the Association in performing its responsibilities and exercising its rights and powers under this Declaration, any Supplemental Declaration, the Articles and the Bylaws, specifically

including but not limited to: expenses of maintaining, repairing, replacing, improving, operating, and insuring the Area of Common Responsibility, including amounts due to third parties who perform such tasks on behalf of the Association, and the costs of labor, equipment, materials, management, supervision, and utilities; taxes, if any, imposed on the Association or the Common Area; the cost of insurance and fidelity bond coverage obtained pursuant to Section 4.6; expenses of monitoring and enforcing compliance with the provisions of the Governing Documents; expenses arising out of the Association's indemnification obligations; expenses arising out of any measure undertaken to enhance the safety of the expenses of managing the Association, including compensation of management personnel, maintaining books and records, handling Association funds, providing financial reports, and corresponding with Members; administrative expenses such as postage, copying expense, office supplies and equipment; legal, accounting, and other professional fees; and such other expenses as the Board deems necessary or desirable to keep the Area of Common Responsibility in good, clean, and attractive condition and to maintain and enhance property values and marketability of Units within the Area of Common Responsibility.

There shall be three types of assessments: (a) General Assessments; (b) Special Assessments as described in Section 5.3; and (c) Specific Assessments as described in Section 5.4. Each Owner, by accepting a deed or entering into a recorded contract of sale for any Unit, is deemed to covenant and agree to pay these assessments, to the extent not paid by the Owners Association having jurisdiction over such Owner's Unit. Such assessments shall commence at the time and in the manner set forth in Section 5.5.

(b) Personal Obligation and Lien. Each Owners Association shall be personally obligated to pay all General Assessments and Special Assessments authorized to be levied against the Units subject to its jurisdiction pursuant to this Declaration. Such assessments, together with any Specific Assessments levied pursuant to Section 5.4, shall also be the personal obligation of the Owner of the Unit against which they are levied, to the extent not paid by the Owners Association having jurisdiction over the Unit. The personal obligation for all such assessments shall include interest (computed from its due date at a rate of 10% per annum or such higher rate as the Board may establish by resolution, not to exceed 18% per annum), late charges as determined by Board resolution (subject to the limitations of North Carolina law), costs, and reasonable attorneys' fees. Such assessments shall also be a charge and continuing lien upon each Unit as provided in Section 5.6, until paid in full. Upon a transfer of title to a Unit, the grantee shall be jointly and severally liable for any assessments and other charges due at the time of conveyance. However, no Mortgagee who obtains title to a Unit by exercising the remedies provided in its Mortgage shall be liable for unpaid assessments that accrued prior to such acquisition of title.

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

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

Within 10 business days after receipt of a written request therefor, the Association shall furnish to any Owners Association or Owner liable for any type of assessment a certificate in writing signed by an Association officer setting forth the amount of any unpaid assessments or other charges for which such Owners Association or Owner is responsible. Such certificate shall be binding on the Association and every Owner. The Association may require the advance payment of a reasonable processing fee for the issuance of such certificate.

5.2. Budgeting and Allocating Association Expenses.

(a) Preparation of Budget. At least 60 days before the beginning of each fiscal year, the Board shall prepare a budget of the estimated Common Expenses for the coming year. The estimated expenses in the budget shall include, in addition to any operating reserves, a reasonable contribution to a reserve fund for repair and replacement of any capital items to be maintained as a Common Expense. In determining the amount of such reserve contribution, the Board shall take into account the number and nature of replaceable assets, the expected useful life of each, the expected repair or replacement cost, and the contribution required to fund the projected need by an annual contribution over the useful life of the asset.

The budget shall also reflect the sources and estimated amounts of funds to cover such expenses, which may include any surplus to be applied from prior years, any income expected from sources other than assessments, and the amount to be generated through the levy of assessments.

(b) Calculation of General Assessments. Upon determining the total amount of income required to be generated through the levy of General Assessments, the Board shall establish the General Assessment to be levied on each Unit in accordance with the formula described in Exhibit "C".

Declarant may, but shall not be obligated to, reduce the General Assessment for any fiscal year by payment of a subsidy. Any such subsidy may be treated as a contribution, an advance against future assessments due from Declarant, or a loan, in Declarant's discretion. Any such subsidy and the characterization thereof shall be conspicuously disclosed as a line item in the income portion of the budget. Payment of such subsidy in any year shall not obligate Declarant to continue payment of such subsidy in future years, unless otherwise provided in a written agreement between the Association and Declarant.

(c) Notice of Budget and Assessment; Ratification. Within 30 days following the Board's adoption of any budget, the Board shall send a summary of the applicable budget,

together with notice of the amount of the General Assessment to be levied pursuant to such budget, to each Owner. The budget shall be accompanied by notice of the date, time and location of a meeting to consider ratification, which meeting shall be set by the Board to occur no less than 10 nor more than 60 days after mailing of the budget summary and notice. The notice shall include a statement that the meeting may be held and the budget may be ratified without a quorum being present.

The budget shall be deemed ratified unless rejected at the meeting by Owners of at least 75% of the total number of Units subject to the jurisdiction of each Owners Association.

If any proposed budget is rejected or the Board fails for any reason to determine the budget for any year, then the budget most recently in effect shall continue in effect until a new budget is determined.

(e) Budget Revisions. The Board may revise the budget and adjust the General Assessment from time to time during the year, subject to the notice and ratification requirements set forth above.

5.3. Special Assessments.

In addition to other authorized assessments, the Association may levy Special Assessments from time to time to cover unbudgeted expenses or expenses in excess of those budgeted under Section 5.2. Except as otherwise specifically provided in this Declaration, any Special Assessment shall require the affirmative vote or written consent of Owners entitled to cast more than 50% of the total Class "A" votes allocated pursuant to Exhibit "C" to Units subject to the jurisdiction of each Owners Association, and during the Development and Sale Period, the written consent of Declarant. Special Assessments shall be allocated and levied on the same basis as General Assessments.

5.4. Specific Assessments.

The Association shall have the power to levy Specific Assessments against a particular Unit to cover costs incurred as a consequence of the conduct of the Owner or occupants of the Unit, their agents, contractors, employees, licensees, invitees, or guests; provided, the Board shall give the Unit Owner prior written notice and an opportunity for a hearing in accordance with the By-Laws, before levying any Specific Assessment.

5.5. Payment of Assessments.

Except as otherwise provided herein, the obligation to pay assessments shall commence as to each Unit on the first day of the month following: (a) the month in which the Unit is made subject to this Declaration, or (b) the month in which the Board first determines a budget and levies assessments pursuant to this Article, whichever is later. The first annual General Assessment levied on each Unit shall be adjusted according to the number of months remaining in the fiscal year at the time assessments commence.

Assessments shall be paid in such manner and on such dates as the Board may establish. If the Board so elects, assessments may be paid in two or more installments. Unless the Board otherwise provides, the General Assessment shall be due and payable in advance on the first day of each fiscal year.

The Owners Association having jurisdiction over each Unit shall be responsible for collecting and paying to the Association in a timely manner the amount of all General and Special Assessments levied against the Unit pursuant to this Declaration. If any Owners Association is delinquent in paying any assessments or other charges levied by the Association, the Board may require the outstanding balance on all assessments to be paid in full immediately, in addition to such other remedies the Association has under this Declaration and applicable law.

5.6. Lien for Assessments.

(a) Subject to North Carolina law, as it may be amended, the Association shall have a lien against each Unit to secure all assessments levied against the Unit pursuant to this Declaration. The Association's lien shall also secure interest, late charges (subject to the limitations of North Carolina law), and costs of collection (including attorneys fees and expenses). Subject to the limitations of North Carolina law, such lien shall be superior to all other liens, except (i) the liens of all taxes, bonds, assessments, and other levies which by law would be superior, and (ii) the lien or charge of any recorded first Mortgage (meaning any recorded Mortgage with first priority over other Mortgages) made in good faith and for value.

(b) If any assessment or other charge due to the Association remains unpaid for a period of 30 days or longer after the due date thereof, the Association may perfect its lien by executing and recording a claim of lien setting forth the amount due. The lien may be foreclosed through judicial or, to the extent allowed by law, nonjudicial foreclosure proceedings in accordance with North Carolina law, as it may be amended

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

(d) Sale or transfer of any Unit shall not affect the assessment lien or relieve such Unit from the lien for any subsequent assessments. However, the sale or transfer of any Unit pursuant to foreclosure of the first Mortgage shall extinguish the lien as to any installments of such assessments due prior to the Mortgagee's foreclosure. The subsequent Owner of the foreclosed Unit shall not be personally liable for assessments on such Unit due prior to such acquisition of title. Such unpaid assessments shall be deemed to be Common Expenses collectible from Owners of all Units subject to assessment under Section 5.5, including such acquirer, its successors and assigns.

5.7. Exempt Property.

The following property shall be exempt from payment of General Assessments and Special Assessments:

- (a) All Common Area and such portions of the property owned by Declarant as are included in the Area of Common Responsibility; and
- (b) Any property dedicated to and accepted by any governmental authority or public utility; and
- (c) Property owned by any Owners Association for the common use and enjoyment of its members.

Article VI Expansion of the Community

6.1. Expansion by Declarant.

Declarant may from time to time expand Blakeney to include all or any portion of the property described in Exhibit "B" by recording a Supplemental Declaration describing the additional property and stating the intent to submit it to the provisions of this Declaration. A Supplemental Declaration recorded pursuant to this Section shall not require the consent of any Person except the owner of such property, if other than Declarant.

Declarant's right to expand Blakeney pursuant to this Section shall expire when all property described in Exhibit "B" has been subjected to this Declaration or 20 years after this Declaration is recorded, whichever is earlier. Until then, Declarant may transfer, assign, or otherwise permit this right to be exercised by any Person or Persons who are the developers of at least a portion of the real property described in Exhibits "A" or "B." Any such transfer, assignment or permission shall be memorialized in a written, recorded instrument executed by Declarant and the Person to whom it is assigned.

Nothing in this Declaration shall be construed to require Declarant or any successor to subject additional property to this Declaration or to develop any of the property described in Exhibit "B" in any manner whatsoever.

6.2. Expansion by the Association.

The Association may also expand Blakeney to include additional property by recording a Supplemental Declaration describing the additional property and the intent to submit it to the provisions of this Declaration. Any such Supplemental Declaration shall require the consent of each Owners Association and the consent of the owner of the property. In addition, so long as Declarant owns property subject to this Declaration or which may become subject to this Declaration in accordance with Section 6.1, Declarant's consent shall be necessary. The Supplemental Declaration shall be signed by the President and Secretary of the Association, by the owner of the property and by Declarant, if Declarant's consent is necessary.

6.3. Additional Covenants and Easements.

Declarant may subject any portion of Blakeney to additional covenants and easements. Such additional covenants and easements may be set forth either in a Supplemental Declaration subjecting such property to this Declaration or in a separate Supplemental Declaration referencing property previously subjected to this Declaration. If the property is owned by someone other than Declarant, then the consent of the Owner(s) shall be necessary and shall be evidenced by their execution of the Supplemental Declaration. Any such Supplemental Declaration may supplement, create exceptions to, or otherwise modify the terms of this Declaration as it applies to the subject property in order to reflect the different character and intended use of such property.

6.4. Effect of Filing Supplemental Declaration.

A Supplemental Declaration shall be effective upon recording unless otherwise specified in such Supplemental Declaration. On the effective date of the Supplemental Declaration, any additional property subjected to this Declaration shall be assigned voting rights in the Association and assessment liability in accordance with the provisions of this Declaration.

Article VII Additional Rights Reserved to Declarant

7.1. Withdrawal of Property.

During the Development and Sale Period, Declarant reserves the right to amend this Declaration for the purpose of removing any portion of the real property which has not yet been improved with structures from the coverage of this Declaration, provided such withdrawal does not reduce the total acreage then subject to the Declaration by more than 10%. Such amendment shall not require the consent of any Person other than the Owner(s) of the property to be withdrawn, if not the Declarant. If the property is Common Area, the Association shall consent to such withdrawal.

7.2. Development and Sales Activities.

During the Development and Sale Period:

(a) Declarant and other Persons whom the Declarant so authorizes may construct and maintain upon portions of the Common Area such facilities and activities as, in Declarant's sole opinion, may be reasonably required, convenient, or incidental to the construction or sale of Units, including, but not limited to, business offices, signs, model units, and sales offices. Declarant and other authorized Persons shall have easements for access to and use of such facilities at no charge. Such right shall specifically include the right of Declarant and its designees to use Common Area facilities for an information center and/or for administrative, sales and business offices at no charge.

(b) Declarant and its employees, agents and designees shall have a right of access and use and an easement over and upon all of the Common Area for the purpose of making,

constructing and installing such improvements to the Common Area as it deems appropriate in its sole discretion.

7.3. Additional Covenants.

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

7.4. Right to Transfer or Assign Declarant Rights.

Any or all of Declarant's special rights and obligations set forth in this Declaration or the By-Laws may be transferred in whole or in part to other Persons; provided, the transfer shall not reduce an obligation nor enlarge a right beyond that which Declarant has under this Declaration or the By-Laws. No such transfer or assignment shall be effective unless it is in a written instrument signed by Declarant and the transferee and recorded. The foregoing sentence shall not preclude Declarant from permitting other Persons to exercise, on a one time or limited basis, any right reserved to Declarant in this Declaration where Declarant does not intend to transfer such right in its entirety, and in such case it shall not be necessary to record any written assignment unless necessary to evidence Declarant's consent to such exercise.

7.5. Exclusive Rights To Use Name of Development.

No Person other than Declarant and its authorized agents shall use the name "Blakeney," any derivative of such names, or associated logos or depictions, in any electronic, printed or promotional media or material without Declarant's prior written consent. However, Owners may use the name "Blakeney" in printed or promotional matter where such term is used solely to specify that particular property is located within Blakeney. The Association shall also be entitled to use the words "Blakeney" in its name.

7.6. Central Telecommunication, Receiving, and Distribution System.

To the extent permitted by applicable law, Declarant reserves for itself, its Affiliates, successors, and assignees, the exclusive and perpetual right and easement to operate within Blakeney, a central telecommunication (including cable television and security monitoring) receiving and distribution system, including conduits, wires, amplifiers, towers, antennae, and other related apparatus and equipment (the "**Community System**") as Declarant, in its discretion, deems appropriate. Such exclusive and perpetual right shall include, without limitation, Declarant's right to select and contract with companies licensed to provide telecommunications and cable television service in the Mecklenburg County, North Carolina area, and to charge or authorize such provider to charge individual users a reasonable fee not to exceed the maximum allowable charge for such service, as from time to time is defined by the laws, rules, and regulations of any relevant government authority, if applicable.

Declarant may enter into and assign to the Association, or cause the Association to enter into, a bulk rate service agreement providing for access to any Community Systems for all Units as a Common Expense. If particular services or benefits are provided to particular Owners or Units at their request, the benefited Owner(s) shall pay the service provider directly for such services, or the Association may assess the charges as a General Assessment or Benefited Assessment and pay such charges to the provider on behalf of the Owners, as the Board deems appropriate.

7.7. Notices and Disclaimers as to Community Systems.

In recognition of the fact that interruptions in service provided by any Community System may occur from time to time, neither the Association, the Declarant, nor any Declarant Affiliate shall be held liable for any interruption in Community Systems services.

Article VIII Easements

8.1. Easements in Common Area.

Declarant grants to each Owner a nonexclusive right and easement of use, access, and enjoyment in and to the Common Area, subject to:

- (a) the Governing Documents and any other applicable covenants;
- (b) any restrictions or limitations contained in any deed conveying such property to the Association;
- (c) the Board's right to:
 - (i) adopt rules regulating use and enjoyment of the Common Area, including rules limiting the number of guests who may use the Common Area; and
 - (ii) suspend the right of an Owner to use facilities within the Common Area pursuant to Section 4.7; and
 - (iii) dedicate or transfer all or any part of the Common Area, subject to Section 4.5; and
 - (iv) charge reasonable initiation fees, admission or other use fees for the use of any facility situated upon the Common Area; and
 - (v) permit use of any facilities situated on the Common Area by persons other than Owners, their families, lessees and guests upon payment of use fees established by the Board and designate other areas and facilities within the Area of Common Responsibility as open for the use and enjoyment of the public; and

(vi) mortgage, pledge, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred, subject to the approval requirements set forth in Section 4.5.

Any Owner may extend his or her right of use and enjoyment to the occupants of his or her Unit, lessees, and invitees, as applicable, subject to reasonable regulation by the Board. An Owner who leases his or her Unit shall be deemed to have assigned all such rights to the lessee of such Unit for the period of the lease.

8.2. Easements for Utilities, Etc.

(a) Installation and Maintenance. Declarant reserves for itself, during the Development and Sale Period, and grants to the Association and all utility providers, perpetual non-exclusive easements throughout Blakeney (but not through a structure) to the extent reasonably necessary for the purpose of:

(i) installing utilities and infrastructure to serve Blakeney, cable and other systems for sending and receiving data and/or other electronic signals, security and similar systems, walkways, pathways and trails, drainage systems, street lights and signage on property which Declarant owns or within public rights-of-way or easements reserved for such purpose on recorded plats or in other recorded documents; and

(ii) inspecting, maintaining, repairing and replacing the utilities, infrastructure and other improvements described in Section 8.2(a)(i); and

(iii) access to read utility meters.

(b) Specific Easements. Declarant also reserves for itself the non-exclusive right and power to grant and record such specific easements as may be necessary, in the sole discretion of Declarant, in connection with the orderly development of any property described in Exhibits "A" and "B." The Owner of any property to be burdened by any easement granted pursuant to this subsection (b) shall be given written notice in advance of the grant. The location of the easement shall be subject to the written approval of the Owner of the burdened property, which approval shall not unreasonably be withheld, delayed or conditioned.

(c) Minimal Interference. All work associated with the exercise of the easements described in subsections (a) and (b) of this Section shall be performed in such a manner as to minimize interference with the use and enjoyment of the property burdened by the easement. Upon completion of the work, the Person exercising the easement shall restore the property, to the extent reasonably possible, to its condition prior to the commencement of the work. The exercise of these easements shall not extend to permitting entry into the structures on any Unit, nor shall it unreasonably interfere with the use of any Unit and, except in an emergency, entry onto any Unit shall be made only after reasonable notice to the Owner or occupant.

8.3. Easements to Serve Additional Property.

Declarant hereby reserves for itself and its duly authorized agents, successors, assigns, and mortgagees, an easement over the Common Area for the purposes of enjoyment, use, access, and development of the property described in Exhibit "B," whether or not such property is made subject to this Declaration. This easement includes, but is not limited to, a right of ingress and egress over the Common Area for construction of roads and for connecting and installing utilities on such property.

Declarant agrees that it and its successors or assigns shall be responsible for any damage caused to the Common Area as a result of their respective actions in connection with development of such property. Declarant further agrees that if the easement is exercised for permanent access to such property and such property or any portion thereof benefiting from such easement is not made subject to this Declaration, Declarant, its successors or assigns shall enter into a reasonable agreement with the Association to share the cost of any maintenance which the Association provides to or along any roadway providing access to such Property.

8.4. Easements for Maintenance, Emergency and Enforcement.

Declarant grants to the Association easements over Blakeney as necessary to enable the Association to fulfill its maintenance responsibilities under Section 4.2. Except in an emergency situation, entry on a Unit shall only be during reasonable hours and after notice to the Owner.

8.5. Easement to Inspect and Right to Correct.

Declarant reserves for itself and others it may designate the right to inspect, monitor, test, redesign, and correct any structure, improvement, or condition which may exist on any portion of the property within Blakeney, including Units, and a perpetual, nonexclusive easement of access throughout Blakeney to the extent reasonably necessary to exercise such right. Except in an emergency, entry onto a Unit shall be only after reasonable notice to the Owner and no entry into a structure shall be permitted. The person exercising this easement shall promptly repair, at such person's own expense, any damage resulting from such exercise.

Article IX Mortgage Provisions

The following provisions are for the benefit of holders, insurers and guarantors of first Mortgages on Residential Units in Blakeney. The provisions of this Article apply to both this Declaration and to the By-Laws, notwithstanding any other provisions contained therein.

9.1. Notices of Action.

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

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

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

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

(d) Any proposed action that would require the consent of a specified percentage of Eligible Mortgage Holders.

9.2. No Priority.

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

9.3. Notice to Association.

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

9.4. HUD/VA Approval.

If the U.S. Department of Housing and Urban Development ("**HUD**") or the U.S. Department of Veterans Affairs ("**VA**") has granted project approval for FHA-insured or VA-guaranteed Mortgages on Units, then during the Class "B" Control Period, the following actions shall require the prior approval of either HUD or VA, in addition to such approval requirements as may be specified for such action elsewhere in the Governing Documents: merger, consolidation or dissolution of the Association; annexation of additional property other than that described in Exhibit "B"; dedication, conveyance or mortgaging of Common Area; or material amendment of this Declaration or the By-Laws. The granting of easements for utilities or other similar purposes consistent with the intended use of the Common Area shall not be deemed a conveyance within the meaning of this Section.

Article X Amendment of Declaration

10.1. By Declarant.

In addition to specific amendment rights granted elsewhere in this Declaration, until termination of the Development and Sale Period Declarant may unilaterally amend this Declaration for the purpose of (a) bringing any provision into compliance with any applicable

governmental statute, rule, regulation, or judicial determination; (b) enabling any reputable title insurance company to issue title insurance coverage on the Units; (c) enabling any institutional or governmental lender, purchaser, insurer or guarantor of mortgage loans, including, for example, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to make, purchase, insure or guarantee mortgage loans on the Units; (d) satisfying the requirements of any local, state or federal governmental agency. In addition, the approval requirements set forth in Section 9.4 shall be met, if applicable. However, any unilateral amendment by Declarant pursuant to this Section shall not materially adversely affect the title to any Unit unless the Owner shall consent in writing.

10.2. By Members.

Except as otherwise specifically provided above and elsewhere in this Declaration, this Declaration may be amended only by the affirmative vote or written consent, or any combination thereof, of Owners entitled to cast at least 67% of the total Class "A" votes in the Association allocated to Units subject to the jurisdiction of each Owners Association pursuant to Exhibit "C" and, during the Development and Sale Period, the Declarant's consent. In addition, the approval requirements set forth in Section 9.4 shall be met, if applicable.

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

10.3. Validity and Effective Date.

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

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

Amendments shall be indexed in the Grantee index under the names "Blakeney" and "Blakeney Association, Inc." and in the Grantor index under the name "Blakeney Heath Limited Partnership."

10.4. Exhibits.

Exhibits "A," "B" and "C" attached to this Declaration are incorporated by this reference and amendment of such exhibits shall be governed by this Article. Exhibit "D" is attached for informational purposes and may be amended as provided therein.

Article XI Termination of Declaration

This Declaration may be terminated only upon recording a termination agreement signed by Owners of at least 80% of the Units, and by the Declarant during the Development and Sale Period. Nothing in this Section shall be construed to permit termination of any easement created in this Declaration without the consent of the holder of such easement.

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

DECLARANT: BLAKENEY HEATH LIMITED PARTNERSHIP, a North Carolina limited partnership [SEAL]

BY: CROSLAND, INC., a North Carolina corporation, its general partner

By: William G. Daleure, II
 Name: William G. Daleure, II
 Its: Vice President :

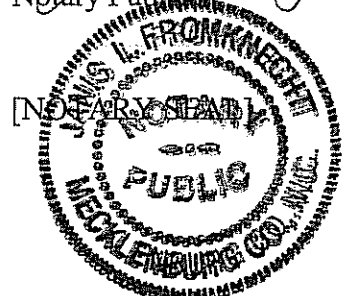
Attest: Shirley W. Henson
 Name: Shirley W. Henson
 Its: Asst. Secretary

STATE OF NORTH CAROLINA)
)
 COUNTY OF Mecklenburg)

I, Janis L. Fromknecht, a Notary Public of the County and State aforesaid, certify that Shirley W. Henson personally came before me this day and acknowledged that s/he is Asst. Sec. of CROSLAND, INC., a North Carolina corporation, general partner of BLAKENEY HEATH LIMITED PARTNERSHIP, a North Carolina limited partnership, and that by authority duly given and as a fact of the corporation, the foregoing instrument was signed in its name by William G. Daleure, its Vice President, and sealed with its corporate seal, on behalf of said limited partnership.

Witness my hand and official stamp or seal, this 31st day of October, 2001.

Janis L. Fromknecht
 Notary Public



My Commission Expires: 7/11/2006

My Commission Expires July 11, 2006

EXHIBIT "A"

Land Initially Submitted

ALL THOSE TRACTS OR PARCELS OF LAND lying and being in Mecklenburg County, North Carolina, and more particularly described as Lots 1-25; 36-42; 95-123 and Building Sites 1-8 and 9-18 as shown on that certain Final Plat of Blakeney Greens, Phase 1, Map 1, recorded July 3, 2001, in Plat Book 35, Page 733, in the office of the Register of Deeds of Mecklenburg County, North Carolina, as such plat may be revised from time to time.

EXHIBIT "B"

Land Subject to Annexation

All those tracts or parcels of land lying and being in Mecklenburg County, North Carolina, and being more particularly described as follows:

BEGINNING at a concrete monument found marking the easternmost corner of Lot 21 of Landen Meadows, Phase 2-A, Subdivision as shown on map recorded in Map Book 24 at Page 168 in the Mecklenburg County Public Registry, said concrete monument also being located in the northwesterly margin of the right-of-way of Rea Road (100' Public R/W), as shown on map recorded in Map Book 24 at Page 167 in the aforesaid Public Registry, and also as described in deed recorded in Book 9970 at Page 371 in the Mecklenburg County Public Registry, and running thence S. 63-53-53 E. 100.72 feet to an iron found in the easterly margin of the aforesaid right-of-way of Rea Road; thence with the aforesaid easterly margin of the right-of-way of Rea Road in a southerly direction with an arc of a circular curve to the left having a radius of 1577.77 feet, an arc length of 369.12 feet (chord bearing and distance of S. 20-00-30 W. 368.28 feet) to an iron found; thence S. 77-34-03 E. 317.49 feet to an iron found; thence N. 69-43-53 E. 504.23 feet to an iron found; thence S. 63-07-17 E. 314.76 feet to an iron found; thence N. 39-56-46 E. 340.24 feet to an iron found; thence N. 89-35-27 E. 1042.24 feet to an iron found; thence N. 26-22-54 W. 319.43 feet to an iron found; thence S. 89-05-36 W. 699.80 feet to an iron found; thence N. 19-29-15 E. 779.80 feet to an iron found; thence S. 72-23-35 E. 159.98 feet to an iron found; thence N. 09-27-23 W. 646.82 feet to an iron found; thence N. 33-49-30 E. 547.48 feet to an iron set; thence N. 09-52-54 E. 99.52 feet to an iron found; thence N. 26-34-55 E. 379.95 feet to an iron found; thence N. 31-18-46 E. 810.30 feet to an iron found; thence N. 26-03-55 E. 559.10 feet to a concrete monument found; thence N. 01-56-46 E. 400.10 feet to an concrete monument found; thence N. 16-41-56 W. 281.47 feet to an iron set; thence N. 75-20-20 W. 890.83 feet to an iron found; thence N. 75-17-29 W. 194.96 feet to an iron found; thence N. 75-16-43 W. 509.64 feet to an iron found; thence S. 03-50-26 W. 9.41 feet to an iron found; thence S. 56-57-51 W. 780.13 feet to an iron found; thence S. 55-55-40 W. 683.59 feet to an iron found; thence S. 57-00-54 W. 412.36 feet to an iron found; thence S. 06-28-04 E. 271.93 feet to an iron found; thence S. 12-14-08 W. 521.06 feet to an iron found; thence S. 01-32-30 W. 329.89 feet to an iron found; thence S. 66-30-40 W. 612.07 feet to an iron found; thence S. 17-38-07 E. 759.43 feet to an iron found; thence S. 15-51-24 E. 1380.82 feet to an iron found; thence S. 63-10-54 E. 344.86 feet to Point or place of Beginning, containing 275.184 acres, all as shown on boundary survey of Landen Town Center, prepared by Jackie G. Duncan, dated January 28, 1999, reference to which boundary survey is hereby made for a more particular description.

In addition to the above, as the owner or with the written consent of the owner, Declarant may also submit to the terms of the Declaration any real property situated within five (5) miles of the perimeter boundaries of the property described on Exhibit "A" or this Exhibit "B."

Note to clerk and title examiners:

This Declaration is not intended to create an encumbrance on title to the property described on this Exhibit "B." Such title may be encumbered only with the consent of the owner by filing a Supplemental Declaration in accordance with Article VI.

EXHIBIT "C"

Formula for Allocation of Common Expenses and Voting Rights

Liability for Common Expenses and voting rights for each Unit shall be determined as follows:

There shall be an initial allocation of liability for Common Expenses and votes in the Association between the Residential Units subject to assessment under Section 5.5 (collectively, the "Residential Properties") and the Commercial Units subject to assessment under Section 5.5, (collectively, the "Commercial Properties") in the same proportion as the percentage of "submitted acreage" within Blakeney devoted to residential use bears to the percentage of "submitted acreage" within Blakeney devoted to commercial use. For purposes of this Declaration, "submitted acreage" shall refer to the total acreage submitted to a recorded declaration establishing the jurisdiction of an Owners Association (including streets and common property of the Owners Association), less the acreage within any parcels or tracts identified on a recorded plat as parks, common open space, or conservation areas. Submitted acreage shall not include Common Areas of Blakeney Association, Inc., or property lying outside the jurisdiction of any Owners Association. All of the submitted acreage within the jurisdiction of an Owners Association comprised of Residential Units shall be deemed devoted to residential use, and all of the submitted acreage within the jurisdiction of an Owners Association comprised of Commercial Units shall be deemed devoted to commercial use. In the case of any Owners Association comprised of both Residential Units and Commercial Units, any portion of the submitted acreage within the jurisdiction of such Owners Association consisting of property other than Units shall be allocated between residential use and commercial use in the same proportion as the total acreage of the Residential Units and Commercial Units, respectively, within the jurisdiction of such Owners Association bears to the total acreage of all Units within the jurisdiction of such Owners Association.

The share of Common Expenses and voting rights allocable to the Residential Properties shall then be further allocated equally among all Residential Units subject to assessment under Section 5.5, except that during any period prior to initial occupancy that a Residential Unit is subject to assessment at less than the full rate of assessment by the Owners Association having jurisdiction over it, such Residential Unit shall be allocated the same share of the full assessment as it would be assessed by its Owners Association.

The share of Common Expenses and voting rights allocable to the Commercial Properties shall be further allocated among the Commercial Units subject to assessment under Section 5.5 in the same proportion as the acreage of each Commercial Unit bears to the total acreage of the Commercial Properties.

In the case of Commercial Units within a condominium, each such Commercial Unit shall be deemed to contain the area of land determined by multiplying the Unit's percentage interest in the common elements of such condominium by the total square footage of land comprising the condominium.

The Board shall annually compute the share of assessments and votes for each Unit subject to assessment as of a date that is not less than 60 days prior to the beginning of each fiscal year. Notice of each Unit's share, stated as a percentage of the total assessment liability and total Association votes, shall be sent to each Owner together with the notice of the budget and any assessment.

In the event that additional real property is made subject to this Declaration between annual cutoff dates for computation of assessment percentages, the Board shall recompute assessment and voting percentages for each Unit and send notice of such recomputed percentages to each Owner; however, no adjustments shall be made in any assessments previously levied to reflect such recomputation.

EXHIBIT "D"

By-Laws of Blakeney Association, Inc.

EXHIBIT "D"

**BY-LAWS
OF
BLAKENEY ASSOCIATION, INC.**

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BY-LAWS
OF
BLAKENEY ASSOCIATION, INC.

Article I Name, Principal Office, and Definitions

1.1. Name.

The name of the corporation is Blakeney Association, Inc. (the "**Association**").

1.2. Principal Office.

The principal office of the Association shall be located in Mecklenburg County, North Carolina. The Association may have such other offices, either within or outside North Carolina, as the Board of Directors may determine or as the affairs of the Association may require.

1.3. Definitions.

Unless otherwise specified, the words used in these By-Laws shall be given their normal, commonly understood definitions. Capitalized terms shall have the same meaning as set forth in that certain Declaration of Covenants and Easements for Blakeney, recorded by Blakeney Heath Limited Partnership ("**Declarant**") in the Office of the Register of Deeds of Mecklenburg County, North Carolina, as it may be amended (the "**Declaration**"), unless the context indicates otherwise. The term "**majority**," as used in these By-Laws, means those votes, Owners, or other group, as the context may indicate, totaling more than 50% of the total eligible number.

Article II Membership: Meetings, Quorum, Voting, Proxies

2.1. Membership.

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

2.2. Place of Meetings.

Meetings of the Association shall be held at the principal office of the Association or at such other suitable place convenient to the Members as the Board may designate.

2.3. Annual Meetings.

The first meeting of the Association, whether a regular or special meeting, shall be held within one year after the date of incorporation of the Association. The Board shall schedule subsequent regular annual meetings to occur during the third quarter of the Association's fiscal year, on such date and at such time and place as the Board shall determine.

2.4. Special Meetings.

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

2.5. Notice of Meetings.

The President, the Secretary, or the officers or other persons calling a meeting of the Members shall deliver or cause to be delivered to each Member entitled to vote at such meeting a written notice stating the place, day, and hour of the meeting. In the case of a special meeting or when otherwise required by statute, the Declaration, or these By-Laws, the purpose or purposes for which the meeting is called shall also be stated in the notice. No business shall be transacted at a special meeting except as stated in the notice.

Such notice shall be delivered by such means as permitted under Section 9.5, not less than 10 nor more than 50 days before the date of such meeting.

2.6. Waiver of Notice.

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

2.7. Adjournment of Meetings.

If any meeting of the Members cannot be held because a quorum is not present, a majority of the Members who are present at such meeting may adjourn the meeting to a time not less than 5 nor more than 30 days from the time the original meeting was called. At the reconvened meeting, if a quorum is present, any business may be transacted which might have been transacted at the meeting originally called. If a time and place for reconvening the meeting is not fixed by those in attendance at the meeting when originally called, or if for any reason a new date is fixed for reconvening the meeting after adjournment, notice of the time and place for reconvening the meeting shall be given to Members in the manner prescribed for regular meetings.

Members present at a duly called or held meeting at which a quorum is present may continue to do business until adjournment, notwithstanding the departure of Members leaving less than a quorum, provided that any action taken is approved by at least a majority of the votes required to constitute a quorum.

2.8. Voting.

The voting rights of the Members set forth in the Declaration are specifically incorporated by this reference.

2.9. Proxies.

Members may vote in person or by proxy, subject to the limitations of North Carolina law and subject to any specific provision to the contrary in the Declaration or these By-Laws. Every proxy shall be in writing, shall identify the Unit for which it is given, and shall be signed by the Member or his duly authorized attorney-in-fact, dated, and filed with the Secretary of the Association prior to the meeting for which it is to be effective. Unless otherwise specifically provided in the proxy, a proxy shall be presumed to cover all votes which the Member giving such proxy is entitled to cast, and in the event of any conflict between two or more proxies purporting to cover the same voting rights, the later dated proxy shall prevail, or if dated as of the same date, both shall be deemed invalid.

Every proxy shall be revocable and shall automatically cease upon: (a) transfer of title to any Unit for which it was given; (b) receipt by the Secretary of written notice of revocation of the proxy or of the death or judicially declared incompetence of a Member who is a natural person; or (c) 11 months from the date of the proxy, unless a shorter period is specified in the proxy.

2.10. Quorum.

Except as otherwise provided in these By-Laws or in the Declaration, the presence of Members representing a majority of the total Class "A" votes in the Association shall constitute a quorum at all meetings of the Association membership. If any meeting cannot be held because a quorum is not present, the quorum requirement for any subsequent attempt to convene such meeting shall be one-half of the previous quorum requirement.

2.11. Conduct of Meetings.

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

2.12. Action Without a Meeting.

Any action required to be taken at a meeting of the Members may be taken without a meeting, without prior notice and without a vote, if written consent specifically authorizing the proposed action is signed by all Members entitled to vote on such matter. Such consents shall be signed within 60 days after receipt of the earliest dated consent, dated and delivered to the

Association. Such consents shall be filed with the minutes of the Association and shall have the same force and effect as a vote of the Members at a meeting.

Article III Board of Directors: Selection, Meetings, Powers

A. Composition and Selection.

3.1. Governing Body: Qualifications.

The affairs of the Association shall be governed by a Board of Directors, each of whom shall have one vote. Except with respect to directors appointed by the Class "B" Member, directors shall be Owners or, in the case of an Owner which is a legal entity, any officer, director, partner, or other duly authorized representative designated in writing by the Owner; however, no Owner may have more than one such representative serving on the Board at a time, except in the case of directors appointed by the Class "B" Member. No more than one eligible person from any Unit may serve on the Board at any time.

3.2. Number of Directors.

The Board shall consist of three to seven directors, as provided in Section 3.3.

3.3. Selection of Directors; Term of Office.

(a) Initial Board. The initial Board shall consist of the three directors identified in the Articles of Incorporation, who shall serve until their successors are appointed or elected as provided in this Section 3.3.

(b) Directors During Class "B" Control Period. The Class "B" Member shall be entitled to appoint, remove and replace the members of the Board in its sole discretion until termination of the Class "B" Control Period, except that during such period, the Class "A" Members shall be entitled to elect a minority of the total number of directors as follows:

(i) Within 90 days after the date on which 25% of the total acreage of property included in the Master Plan and 25% of the total number of Residential Units permitted by applicable zoning for the property included in the Master Plan have certificates of occupancy and have been conveyed to Persons other than the Declarant or Builders, or whenever the Class "B" Member earlier determines, the Board shall increase to five directors and the President shall call for an election by which the Class "A" Members shall be entitled to elect one of the five directors, the other four directors being appointed by the Class "B" Member.. The director so elected shall not be subject to removal by the Class "B" Member and shall be elected for a term of two years or until the election of directors pursuant to subsection (b)(ii) below, whichever is shorter. If such director's term expires prior to the election of directors pursuant to subsection (b)(ii), a successor shall be elected for a like term.

(ii) Within 90 days after the date on which 50% of the total acreage of property included in the Master Plan and 50% of the total number of Residential Units permitted by applicable zoning for the property included in the Master Plan have certificates of occupancy

and have been conveyed to Persons other than the Declarant or Builders, or whenever the Class "B" Member earlier determines, the President shall call for an election by which the Class "A" Members shall be entitled to elect two of the five directors, the other three directors being appointed by the Class "B" Member. The directors so elected shall not be subject to removal by the Class "B" Member and shall be elected for a term of two years or until the election of directors pursuant to subsection (c)(i) below, whichever is shorter. If such directors' term expires prior to the election of directors pursuant to subsection (c)(i), successors shall be elected for a like term.

(c) Directors After the Class "B" Control Period.

(i) The President shall call for an election not later than 90 days after termination of the Class "B" Membership by which the Class "A" Members shall be entitled to elect all five directors. The terms of the directors elected at such time shall be staggered as they determine among themselves so that the terms of two directors will expire at the first annual meeting following the six month anniversary of their election and the terms of the remaining three directors will expire at the second annual meeting following the six month anniversary of their election.

(ii) Upon expiration of the term of office of each director elected pursuant to subsection (c)(i), a successor shall be elected to serve a term of two years.

(iii) Directors elected by Class "A" Members shall hold office until their respective successors have been elected. Directors may be elected to serve any number of consecutive terms.

3.4. Nomination and Election Procedures.

(a) Nomination of Candidates. At least 30 days prior to any election of a director to be elected by the votes of Class "A" Members, the Board shall appoint a Nominating Committee consisting of a chairman, who shall be a member of the Board of Directors, and one representative of each Owners Association. The members of the Nominating Committee shall serve until the conclusion of such election. The names of the members of the Nominating Committee shall be announced in the notice of such election.

In preparation for such election, the Nominating Committee shall meet and nominate at least as many candidates as there are positions on the Board to be filled by the Class "A" Members at such election. In making its nominations, the Nominating Committee shall use reasonable efforts to nominate candidates representing the diversity that exists within the pool of potential candidates. Nominations shall also be permitted from the floor at any meeting at which an election is held, or by write-in on any ballot. All candidates shall have a reasonable opportunity to communicate their qualifications to the Members and to solicit votes.

(b) Election Procedures. At each election, voting shall be by written ballot. Each Class "A" Member entitled to vote may cast all vote(s) assigned to its Unit(s) for each position to

be filled. Cumulative voting shall be permitted. The candidate from each slate receiving the greatest number of votes shall be elected.

3.5. Removal of Directors and Vacancies.

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

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

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

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

B. Meetings.

3.6. Organizational Meetings.

The first meeting of the Board shall be held immediately following each annual meeting of the membership.

3.7. Regular Meetings.

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

3.8. Special Meetings.

Special meetings of the Board shall be held when called by written notice signed by the President or Vice President or by any two directors.

3.9. Notice; Waiver of Notice.

(a) Notices of Board meetings shall specify the time and place of the meeting and, in the case of a special meeting, the nature of any special business to be considered. The notice shall be given to each director by: (i) personal delivery; (ii) first class mail, postage prepaid; (iii) telephone communication, either directly to the director or to a person at the director's office or home who would reasonably be expected to communicate such notice promptly to the director; or (iv) facsimile, computer, or other electronic mail, messaging or communication device, with printed confirmation of successful transmission. All such notices shall be given at or sent to the director's telephone number, fax number, electronic mail address, or mailing or physical address as shown on the records of the Association. Notices sent by first class mail shall be deposited into a United States mailbox at least five business days before the time set for the meeting. Notices given by personal delivery, telephone, or other device shall be delivered or transmitted at least 72 hours before the time set for the meeting.

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

3.10. Telephonic Participation in Meetings.

Members of the Board or any committee that the Board appoints may participate in a meeting of the Board or committee by conference telephone, video conference, or similar communications equipment, provided all persons participating in the meeting can hear each other simultaneously. Participation in a meeting pursuant to this section shall constitute presence in person at such meeting.

3.11. Quorum of Board.

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

3.12. Conduct of Meetings.

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

3.13. Open Meetings: Executive Session.

(a) Subject to the provisions of subsection (b) and Section 3.14, all Board meetings shall be open to all Members, but attendees other than directors may not participate in any discussion or deliberation unless a director requests that they be granted permission to speak. In such case, the President may limit the time any such individual may speak.

(b) Notwithstanding the above, the President may adjourn any meeting of the Board and reconvene in executive session, and may exclude persons other than directors, to discuss matters of a sensitive nature, such as pending or threatened litigation, personnel matters, etc.

3.14. Action Without a Formal Meeting.

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

C. Powers and Duties.

3.15. Powers.

The Board shall have all of the powers and duties necessary for the administration of the Association's affairs and for performing all responsibilities and exercising all rights of the Association as set forth in the Governing Documents, and as provided by law. The Board may do or cause to be done on behalf of the Association all acts and things except those which the Governing Documents or North Carolina law require to be done and exercised exclusively by the members or the Owners Associations. Board determinations as to the meaning, scope, and application of Governing Document provisions shall be upheld and enforced so long as such determinations are reasonable.

3.16. Duties.

Duties of the Board shall include, without limitation:

(a) preparing and adopting, in accordance with the Declaration, an annual budget establishing each Owner's share of the Common Expenses; and

(b) levying and collecting such assessments; and

- (c) providing for the operation, care, upkeep, and maintenance of the Area of Common Responsibility consistent with the Community-Wide Standard; and
- (d) designating, hiring, and dismissing personnel necessary to carry out the Association's rights and responsibilities and where appropriate, providing for compensation of such personnel and for the purchase of equipment, supplies, and materials to be used by such personnel in the performance of their duties; and
- (e) depositing all funds received on behalf of the Association in a bank depository which it shall approve, and using such funds to operate the Association; provided, any reserve funds may be deposited, in the Board's best judgment, in depositories other than banks; and
- (f) making and amending rules regulating use of the Area of Common Responsibility in accordance with the Declaration; and
- (g) opening bank accounts on behalf of the Association and designating the signatories required; and
- (h) making or contracting for the making of repairs, additions, and improvements to or alterations of the Area of Common Responsibility in accordance with the Declaration and these By-Laws; and
- (i) enforcing by legal means the provisions of the Governing Documents and bringing any proceedings which may be instituted on behalf of or against the Owners concerning the Association; and
- (j) obtaining and carrying property and liability insurance and fidelity bonds, as provided in the Declaration, paying the cost thereof, and filing and adjusting claims, as appropriate; and
- (k) paying the cost of all services rendered to the Association; and
- (l) keeping books with detailed accounts of the Association's receipts and expenditures; and
- (m) making available to any prospective purchaser of a Unit, any Owner, and the holders, insurers, and guarantors of any Mortgage on any Unit, current copies of the Governing Documents and all other books, records, and financial statements of the Association as provided in Section 9.4; and
- (n) permitting utility suppliers to use portions of the Common Area reasonably necessary to the ongoing development or operation of the Properties; and
- (o) indemnifying a director, officer or committee member, or former director, officer or committee member of the Association to the extent such indemnity is required by North Carolina law, the Articles or these By-Laws.

Article IV Officers

4.1. Officers.

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

4.2. Election and Term of Office.

The Board shall elect the Association's officers at the first Board meeting following each annual meeting of the Members, to serve until their successors are elected.

4.3. Resignation, Removal and Filling of Vacancies.

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

(b) The Board may remove any officer whenever in its judgment the best interests of the Association will be served.

(c) The Board may fill any vacancy in any office arising because of death, resignation, removal, or otherwise, for the unexpired portion of the term.

4.4. Powers and Duties.

The Association's officers shall each have such powers and duties as generally pertain to their respective offices, as well as such powers and duties as the Board may specifically confer or impose. The President shall be the chief executive officer of the Association. The Treasurer shall have primary responsibility for preparation of the budget as provided for in the Declaration and may delegate all or part of the preparation and notification duties to a finance committee, management agent, or both.

Article V Committees

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

Article VI Standards of Conduct; Liability and Indemnification

6.1. Standards for Directors and Officers.

The Board shall exercise its powers in a reasonable, fair, nondiscriminatory manner and shall adhere to the procedures established in the Governing Documents.

In performing their duties, directors and officers shall act as fiduciaries and shall be insulated from liability as provided for directors of corporations under state law and as otherwise provided by the Governing Documents. Directors and officers shall discharge their duties as directors or officers, and as members of any committee to which they are appointed, in a manner that the director or officer believes in good faith to be in the best interest of the corporation and with the care that an ordinarily prudent person in a like position would exercise under similar circumstances. A director is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, prepared or presented by others to the extent authorized under the North Carolina Nonprofit Corporation Act.

6.2. Liability.

(a) A director shall not be personally liable to the Association, any Member, or any other Person for any action taken or not taken as a director if the director has acted in accordance with Section 6.1.

(b) Pursuant to the business judgment rule, a director also shall not be personally liable for any action taken or not taken as a director if the director:

(i) acts within the expressed or implied scope of the Governing Documents and his or her actions are not *ultra vires*;

(ii) affirmatively undertakes to make decisions which are necessary for the Association's continued and successful operation and, when decisions are made, makes them on an informed basis;

(iii) acts on a disinterested basis, promptly disclosing any real or potential conflict of interests (pecuniary or other), and avoiding participation in decisions and actions on matters as to which he has a conflict of interest (beyond that which all directors have by virtue of their ownership or occupancy of a Unit); and

(iv) acts in a non-fraudulent manner and without reckless indifference to the Association's affairs.

(c) The officers, directors, and committee members of the Association shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct, or bad faith. The officers and directors shall have no personal liability with respect to any contract or other commitment made or action taken in good faith on behalf of the Association (except to the extent that such officers or directors may also be Members of the Association).

6.3. Indemnification.

Subject to the limitations of North Carolina law, the Association shall indemnify every officer, director, and committee member against all damages and expenses, including counsel fees and expenses, reasonably incurred in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board of Directors) to which he or she may be a party by reason of being or having been an officer, director, or committee member, except that the Association shall have no obligation to indemnify any individual against liability or expenses incurred in connection with a proceeding:

(a) brought by or in the right of the Association, although it may reimburse the individual for reasonable expenses incurred in connection with the proceeding if it is determined, by the court or in the manner provided above, that the individual met the relevant standard of conduct under the North Carolina Nonprofit Corporation Act; or

(b) to the extent that the individual is adjudged liable for conduct that constitutes:

(i) appropriation, in violation of his or her duties, of any business opportunity of the Association; or

(ii) intentional misconduct or knowing violation of the law; or

(iii) an unlawful distribution to members, directors or officers; or

(iv) receipt of an improper personal benefit.

This right to indemnification shall not be exclusive of any other rights to which any present or former officer, director, or committee member may be entitled. The Association shall, as a Common Expense, maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such insurance is reasonably available.

6.4. Advancement of Expenses.

In accordance with the procedures and subject to the conditions and limitations set forth in the North Carolina Nonprofit Corporation Act, the Board may authorize the Association to advance funds to pay for or reimburse the reasonable expenses incurred by a present or former officer, director or committee member in any proceeding to which he or she may be a party by reason of being or having been an officer, director, or committee member of the Association.

6.5. Board and Officer Training.

The Board may conduct or provide for seminars and continuing educational opportunities designed to educate and inform its officers and directors of their responsibilities as officers and directors. Such programs may include instruction on applicable North Carolina corporate and fiduciary law principles, other issues relating to administering community affairs, and upholding and enforcing the Governing Documents. The Board may retain industry professionals, which may include property managers, attorneys, and accountants, as appropriate or necessary for such

purpose. Each newly elected officer and director shall be encouraged to complete a training seminar within the first six months of assuming such position.

Article VII Management and Accounting

7.1. Compensation of Directors and Officers.

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

7.2. Right of Class "B" Member to Disapprove Actions.

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

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

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

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

The Class "B" Member, its representatives or agents shall make its concerns, thoughts, and suggestions known to the Board and/or the members of the subject committee. The Class

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

7.3. Managing Agent.

The Board may employ for the Association a professional management agent or agents at such compensation as the Board may establish, to perform such duties and services as the Board shall authorize. The Board may delegate such powers as are necessary to perform the manager's assigned duties, but shall not delegate policy-making authority or ultimate responsibility for those duties set forth in Section 3.16. Declarant or its affiliate may be employed as managing agent or manager.

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

The Association shall not be bound, either directly or indirectly, by any management contract executed during the Class "B" Control Period unless such contract contains a right of termination which may be exercised by the Association, with or without cause and without penalty, at any time after termination of the Class "B" Control Period upon not more than 90 days' written notice.

No remuneration shall be accepted by the managing agent from vendors, independent contractors, or others providing goods or services to the Association, whether in the form of commissions, finder's fees, service fees, prizes, gifts, or otherwise; any thing of value received shall benefit the Association. Any financial or other interest that the managing agent may have in any firm providing goods or services to the Association shall be disclosed promptly to the Board.

7.4. Accounts and Reports.

(a) The following accounting standards shall be followed unless the Board by resolution specifically determines otherwise:

(i) cash or accrual accounting, as defined by generally accepted accounting principles, shall be employed; and

(ii) accounting and controls should conform to generally accepted accounting principles; and

(iii) cash accounts of the Association shall not be commingled with any other accounts.

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

(i) an income statement reflecting all income and expense activity for the preceding period on an accrual basis; and

(ii) a statement reflecting all cash receipts and disbursements for the preceding period; and

(iii) a variance report reflecting the status of all accounts in an "actual" versus "approved" budget format; and

(iv) a balance sheet as of the last day of the preceding period; and

(v) a delinquency report listing any Owners Associations that are delinquent in paying any assessments at the time of the report and describing the status of any action to collect such assessments which remain delinquent (any assessment or installment thereof shall be considered to be delinquent on the 15th day following the due date unless otherwise specified by Board resolution).

(c) An annual report consisting of at least the following shall be made available to all Members within 120 days after the close of the fiscal year: (i) a balance sheet; (ii) an operating (income) statement; and (iii) a statement of changes in financial position for the fiscal year. Such annual report shall be prepared on an audited, reviewed, or compiled basis, as the Board determines, by an independent public accountant; provided, upon written request of any holder, guarantor or insurer of any first Mortgage on a Unit, the Association shall provide an audited financial statement. During the Class "B" Control Period, the annual report shall include certified financial statements.

7.5. Borrowing.

The Association shall have the power to borrow money for any legal purpose; provided, the Board shall obtain Owner approval in the same manner provided in the Declaration for Special Assessments if the proposed borrowing is for the purpose of making discretionary capital improvements and the total amount of such borrowing, together with all other debt incurred within the previous 12-month period, exceeds or would exceed 20% of the Association's budgeted gross expenses for that fiscal year. During the Class "B" Control Period, no Mortgage lien shall be placed on any portion of the Common Area without the affirmative vote or written consent, or any combination thereof, of Owners entitled to cast at least 51% of the total Class "A" votes allocated to Units subject to the jurisdiction of each Owners Association. In addition, if the U. S. Department of Veterans Affairs or the U. S. Department of Housing and Urban Development is insuring or guaranteeing the Mortgage on any Unit, then the consent of HUD or VA shall be required to mortgage the Common Area during the Class "B" Control Period.

7.6. Right to Contract.

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

7.7. Agreements, Contracts, Deeds, Leases, Checks, Etc.

All agreements, contracts, deeds, leases, checks, and other instruments of the Association shall be executed by at least two officers or by such other person or persons as the Board may designate by resolution.

Article VIII Enforcement Procedures

The Association shall have the power, as provided in the Declaration, to impose sanctions for any violation of the Governing Documents. To the extent specifically required by the Declaration, the Board shall comply with the following procedures prior to imposition of sanctions:

8.1. Notice and Response.

The Board or its delegate shall serve the alleged violator with written notice describing (a) the nature of the alleged violation, (b) the proposed sanction to be imposed, (c) a period of not less than 10 days within which the alleged violator may present a written request for a hearing to the Board; and (d) a statement that the proposed sanction maybe imposed as contained in the notice unless a hearing is requested within 10 days of the notice.

The alleged violator shall respond to the notice of the alleged violation in writing within such 10-day period, regardless of whether the alleged violator is challenging the imposition of the proposed sanction. If the alleged violator cures the alleged violation and notifies the Board in writing within such 10-day period the Board may, but shall not be obligated to, waive the sanction.

Prior to the effectiveness of sanctions imposed pursuant to this Article VIII, proof of proper notice shall be placed in the minutes of the Board. Such proof shall be deemed adequate if a copy of the notice, together with a statement of the date and manner of delivery, is entered by the officer, director, or agent who delivered such notice. The notice requirement shall be deemed satisfied if the alleged violator or its representative requests and appears at the hearing.

8.2. Hearing.

If a hearing is requested within the allotted 10-day period, the hearing shall be held before the Board in executive session. The alleged violator shall be afforded a reasonable opportunity to

be heard. The minutes of the meetings of the Board shall contain a written statement of the results of the hearing (i.e., the decision of the Board) and the sanction, if any, to be imposed.

If a timely request for a hearing is not made, the sanction stated in the notice shall be imposed; however, the Board may, but shall not be obligated to, suspend any proposed sanction if the violation is cured within the 10-day period. Such suspension shall not constitute a waiver of the right to sanction future violations of the same or other provisions and rules by any Person.

Article IX Miscellaneous

9.1. Fiscal Year.

The Association's fiscal year shall be the calendar year unless the Board establishes a different fiscal year by resolution.

9.2. Parliamentary Rules.

Except as may be modified by Board resolution, *Robert's Rules of Order* (current edition) shall govern the conduct of Association proceedings when not in conflict with North Carolina law or the Governing Documents.

9.3. Conflicts.

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

9.4. Books and Records.

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

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

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

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

properties owned or controlled by the Association. The right of inspection by a director includes the right to make a copy of relevant documents at the Association's expense.

9.5. Notices.

(a) Form of Notice and Method of Delivery. Except as otherwise provided in the Declaration or these By-Laws or by law, all notices, demands, bills, statements, or other communications under the Declaration or these By-Laws shall be in writing and may be delivered in person, by United States mail, by private carrier, or if the intended recipient has given its prior written authorization to use such method of delivery, by telephone facsimile or electronic mail with written confirmation of transmission.

(b) Delivery Address. Notices shall be delivered or sent to the intended recipient as follows:

(i) if to a Member, at the address, telephone facsimile number, or e-mail address which the Member has designated in writing and filed with the Secretary or, if no such address has been designated, at the address of the Unit of such Member;

(ii) if to the Association, the Board, or a committee of either, at the address, telephone facsimile number, or e-mail address of the principal office of the Association or its managing agent, or at such other address as the Association shall designate by notice in writing to the Members pursuant to this Section; or

(iii) if to the Declarant, at the principal address of the Declarant as it appears on the Secretary of State's records, or at such other address as the Declarant shall designate by notice in writing to the Association pursuant to this Section.

(c) Effective Date. Notice sent in accordance with subsections (a) and (b) shall be deemed to have been duly given and effective:

(i) if sent by United States mail, when deposited with the U. S. Postal Service, correctly addressed, with first class or higher priority postage prepaid;

(ii) if delivered personally or by private carrier, when actually delivered to the address of the intended recipient, as evidenced by the signature of the person at such address who accepts such delivery;

(iii) if sent by telephone facsimile or electronic mail, upon transmission, as evidenced by a printed confirmation of transmission.

9.6. Amendment.

(a) By Class "B" Member. Until termination of the Class "B" Membership, the Class "B" Member may unilaterally amend these By-Laws for any purpose, subject to the veto power set forth in subsection (c), if applicable.

(b) By Members Generally. Except as provided above, these By-Laws may be amended only by the affirmative vote or written consent, or any combination thereof, of Members representing at least 51% of the total Class "A" votes in the Association allocated to the Units subject to the jurisdiction of each Owners Association, and the consent of the Class "B" Member, if such exists. In addition, any such amendment shall be subject to the veto power set forth in subsection (c), if applicable. Notwithstanding the above, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause.

(c) Validity and Effective Date of Amendments. If the U. S. Department of Veterans Affairs or the U. S. Department of Housing and Urban Development is insuring or guaranteeing the Mortgage on any Unit, then either agency shall be given notice of and shall have the right to veto any amendment to these By-Laws adopted during the Class "B" Control Period prior to such amendment being recorded. Otherwise, amendments to these By-Laws shall become effective upon recordation unless a later effective date is specified therein. Any procedural challenge to an amendment must be made within six months of its recordation, or such amendment shall be presumed to have been validly adopted. In no event shall a change of conditions or circumstances operate to amend any provisions of these By-Laws.

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

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JUDITH A. GIBSON
REGISTER OF DEEDS , MECKLENBURG COUNTY
COUNTY & COURTS OFFICE BUILDING
720 EAST FOURTH STREET
CHARLOTTE NC 28202

Filed For Registration: 10/31/2001 04:27 PM
Book: RE 12837 Page: 143-201
Document No.: 2001190910
RESTR 59 PGS \$122.00
Recorder: F. RAY BAKER JR.

State of North Carolina, County of Mecklenburg

The foregoing certificate of JANIS L. FROMKNECHT Notary is certified to be correct. This 31 ST of October 2001

JUDITH A. GIBSON, REGISTER OF DEEDS By: F. Ray Baker
Deputy/Assistant Register of Deeds



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