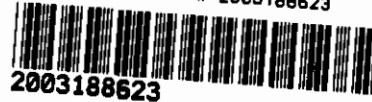


STATE OF NORTH CAROLINA
COUNTY OF MECKLENBURG

FOR REGISTRATION JUDITH A. GIBSON
REGISTER OF DEEDS
MECKLENBURG COUNTY, NC
2003 AUG 14 03:24 PM
BK: 15919 PG: 646-723 FEE: \$242.00

INSTRUMENT # 2003188623



2003188623

DECLARATION OF PROTECTIVE COVENANTS
FOR
BLAKENEY PROFESSIONAL CENTER

Prepared by / upon recording return to:

Crosland, Inc.
14 \ ~~405~~ Scaleybark Road
Charlotte, NC 28209

TABLE OF CONTENTS

	<u>PAGE</u>
Article I Creation of the Community	1
1.1. Purpose and Intent.....	1
1.2. Binding Effect.....	1
1.3. Governing Documents.....	2
Article II Concepts and Definitions	3
Article III Use and Conduct	6
3.1. Liability Insurance; Indemnification.....	6
3.2. Rules and Restrictions.....	6
3.3. Owners' Acknowledgment and Notice to Purchasers.....	7
3.4. Protection of Owners and Others.....	7
Article IV Architecture and Landscaping.....	8
4.1. General.....	8
4.2. Architectural Review Committee.....	9
4.3. Guidelines and Procedures.....	10
4.4. No Waiver of Future Approvals.....	12
4.5. Variances.....	12
4.6. Limitation of Liability.....	13
4.7. Certificate of Compliance.....	13
Article V Maintenance and Repair.....	13
5.1. Maintenance of Units.....	13
5.2. Maintenance by Additional Associations.....	14
5.3. Responsibility for Repair and Replacement.....	14
Article VI The Association and its Members	15
6.1. Function of Association.....	15
6.2. Membership.....	15
6.3. Voting.....	15
Article VII Association Powers and Responsibilities	16
7.1. Acceptance and Control of Association Property.....	16
7.2. Maintenance and Operation of Area of Common Responsibility.....	17
7.3. Insurance.....	18
7.4. Compliance and Enforcement.....	21
7.5. Implied Rights; Board Authority.....	23
7.6. Safety and Security.....	23
7.7. Provision of Services.....	23
7.8. Relationships with Other Properties.....	24

Article VIII Association Finances	24
8.1. Budgeting for and Allocating Association Expenses.....	24
8.2. Special Assessments.	26
8.3. Specific Assessments.	26
8.4. Obligation for Assessments.	27
8.5. Lien for Assessments.	28
8.6. Authority to Assess Owners; Time of Payment.	29
8.7. Exempt Property.	29
Article IX Expansion of the Community.....	29
9.1. Expansion by Declarant.	29
9.2. Expansion by the Association.	30
9.3. Additional Covenants and Easements.....	30
9.4. Effect of Filing Supplemental Declaration.	30
Article X Additional Rights Reserved to Declarant.....	30
10.1. Withdrawal of Property.....	30
10.2. Right to Approve Changes in Community Standards.....	31
10.3. Development and Sales Activities.	31
10.4. Control of and Changes in Development Plan.....	31
10.5. Right to Transfer or Assign Declarant Rights.....	32
10.6. Right to Notice of Design or Construction Claims.....	32
Article XI Easements.....	32
11.1. Easements in Common Area.....	32
11.2. Easements of Encroachment.	33
11.3. Easements for Utilities, Etc.....	33
11.4. Easements to Serve Additional Property.	34
11.5. Easements for Maintenance, Emergency and Enforcement.....	34
11.6. Easements for Pond Maintenance and Flood Water.	34
11.7. Easement to Inspect and Right to Correct.....	35
11.8. Easement for Erosion Control.....	35
Article XII Dispute Resolution and Limitation on Litigation.....	35
12.1. Agreement to Encourage Resolution of Disputes Without Litigation.	35
12.2. Dispute Resolution Procedures.	36
12.3. Initiation of Litigation by Association.....	37
Article XII Mortgagee Provisions.....	38
Article XVII Covenant to Share Costs	38
Article XIV Changes in Ownership of Units.....	39
Article XV Changes in Common Area.....	39

15.1.	Condemnation.....	39
15.2.	Partition.....	40
15.3.	Transfer or Dedication of Common Area.....	40
Article XVI Amendment of Declaration.....		40
16.1.	By Declarant.....	40
16.2.	By Members.....	40
16.3.	Validity and Effective Date.....	40
16.4.	Exhibits.....	41

- TABLE OF EXHIBITS -

<u>Exhibit</u>	<u>Subject Matter</u>	<u>Page First Mentioned</u>
"A"	Property Initially Submitted	1
"B"	Property Subject to Annexation	29
"C"	Initial Use Restrictions and Rules	5
"D"	Formula for Determining Assessment Liability and Voting Rights	15
"E"	By-Laws of Blakeney Professional Center Association, Inc.	4

DECLARATION OF PROTECTIVE COVENANTS

FOR

BLAKENEY PROFESSIONAL CENTER

THIS DECLARATION OF PROTECTIVE COVENANTS is made this ____ day of _____, 20____, by Blakeney Heath Limited Partnership, a North Carolina limited

DECLARATION OF PROTECTIVE COVENANTS

FOR

BLAKENEY PROFESSIONAL CENTER

THIS DECLARATION OF PROTECTIVE COVENANTS is made this ____ day of _____, 20__, by Blakeney Heath Limited Partnership, a North Carolina limited partnership ("Declarant").

Article I **Creation of the Community**

1.1. Purpose and Intent.

By recording this Declaration in the Public Records, Declarant intends to establish a general plan of development for a portion of the properties within the planned community known as Blakeney, which portion may consist of a variety of commercial and nonresidential land uses. An integral part of the development plan for such property is the creation of Blakeney Professional Center Association, Inc., a nonprofit corporation whose membership is comprised of all owners of real property submitted to this Declaration (the "Association"), to own, operate, and/or maintain various common areas and community improvements and to administer and enforce this Declaration and the other Governing Documents referenced in this Declaration.

This document does not and is not intended to create a condominium under North Carolina law.

1.2. Binding Effect.

This Declaration shall constitute a covenant running with the title to all property described in Exhibit "A" and such additional property, if any, as is hereafter submitted to this Declaration by a Supplemental Declaration recorded pursuant to Article IX. (collectively, the "Properties"). The Properties shall be owned, conveyed and used subject to the provisions of this Declaration, which shall be binding upon and shall be enforceable by all Persons now or hereafter having any right, title, or interest in any portion of the Properties, and their heirs, successors, successors-in-title, and assigns. In addition, this Declaration shall be enforceable by Declarant, the Association, Blakeney Association, Inc., a North Carolina nonprofit corporation, and their respective legal representatives, successors, and assigns, whether or not such entities hold any interest in any portion of the Properties.

This Declaration shall remain in effect for a term of 30 years from the date it is recorded in the Office of Register of Deeds of Mecklenburg County, North Carolina, subject to any amendments that may be adopted during such period in accordance with the procedures described in this Declaration. After such time, this Declaration shall be extended automatically

for successive periods of 10 years each, unless an instrument signed by 67% of the then Owners and by Blakeney Association, Inc. is recorded within the year preceding any extension, agreeing to terminate this Declaration, in which case this Declaration shall terminate as of the date specified in such instrument.

Notwithstanding this, if any provision of this Declaration would be unlawful, void, or voidable by reason of any North Carolina law prohibiting covenants from extending more than 21 years beyond the death of a person identified in such covenant who is living at the time such covenant is made, such provision shall expire 21 years after the death of the last survivor of the now living descendants of Elizabeth II, Queen of England. 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.

1.3. Governing Documents.

The Governing Documents for the Properties consist of:

- the Blakeney Covenant (as defined in Article II) and the governing documents referenced in that document;
- this Declaration and such Supplemental Declarations as may be recorded from time to time pursuant to Article IX;
- the Articles of Incorporation and By-Laws of the Association;
- the Restrictions and Rules described in Article III;
- the Architectural Guidelines described in Article IV; and
- such resolutions as the Association's Board of Directors may adopt from time to time pursuant to this Declaration;

all as they may be amended.

If any portion of the Properties is hereafter made subject to additional covenants, restrictions and easements, any conflict between or among the Governing Documents and any such additional covenants, restrictions, and easements shall be resolved in favor of the more restrictive.

The Governing Documents apply to all Owners, tenants, and occupants of any portion of the Properties, as well as to their respective employees, guests and invitees. Any lease relating to any portion of the Properties shall provide that the tenant and all occupants of the leased property are bound by and obligated to comply with the Governing Documents.

If a 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 other applications of such provision.

Article II Concepts and Definitions

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

"Additional Association": A condominium association or other owners' association, if any, having jurisdiction over any portion of the Properties concurrent with (but subject to) the jurisdiction of the Association. Nothing in this Declaration shall require the creation of an Additional Association for any portion of the Properties.

"Architectural Guidelines": The guidelines, standards, and review procedures for architectural design and construction and for modifications to Units adopted pursuant to Article IV, as they may be amended.

"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 Professional Center Association, Inc., filed with the Secretary of State of the State of North Carolina, as they may be amended.

"Association": Blakeney Professional Center Association, Inc., a North Carolina nonprofit corporation, its successors or assigns.

"Base Assessment": Assessments levied on all Units subject to assessment under Article VIII to fund Common Expenses for the general benefit of all Units, as determined in accordance with Section 8.1.

"Blakeney": That mixed-use planned development comprised of all of the real property submitted to the terms of the Blakeney Covenant, as it may be amended and supplemented, including the Properties.

"Blakeney Association": Blakeney Association, Inc., a nonprofit corporation organized under North Carolina law to administer the Blakeney Covenant.

"Blakeney Covenant": That Declaration of Covenants and Easements for Blakeney, recorded in the Office of the Register of Deeds for Mecklenburg County, North Carolina on October 31, 2001 in Book 12837, Page 143, *et seq.*, as it may be amended.

"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.

"By-Laws": The By-Laws of Blakeney Professional Center Association, Inc., a copy of which is attached to this Declaration as Exhibit "E," as it may be amended.

"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 the By-Laws. The Class "B" Control Period shall terminate on the first to occur of the following:

(a) when 75% of the total acreage of the property described in Exhibits "A" and "B" has been conveyed by Declarant to persons other than a successor Declarant;

(b) 20 years after the date on which this Declaration is recorded in the Office of the Register of Deeds for Mecklenburg County, North Carolina; or

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

"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 Units.

"Common Expenses": The actual and estimated expenses incurred, or anticipated to be incurred, by the Association for the general benefit of all Units, including any reasonable reserve, as the Board may find necessary and 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 (payments due under leases of capital improvements such as street lights shall not be considered an initial development or original construction cost) unless either included as a line item in the initial Association budget or approved by a majority of the total Class "A" votes in the Association.

"Community-Wide Standard": The standard of conduct, maintenance, or other activity generally prevailing within the Properties, or the minimum standards established pursuant to the Architectural Guidelines, Restrictions and Rules, and Board resolutions, whichever is the higher standard. Such standard shall be established initially by Declarant and may contain both objective and subjective elements. The Community-Wide Standard may evolve as development progresses.

"Covenant to Share Costs": Any declaration of easements and covenant to share costs or similar instrument executed and recorded by Declarant or the Association which creates easements for the benefit of the Association or other properties within Blakeney and/or which obligates the Association and any other owners association or the owner of any other property in Blakeney to share the costs of maintaining certain property described in such Covenant to Share Costs.

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

"Developer": Any Person who purchases one or more Units or parcels of land within the Properties for the purpose of constructing improvements for resale in the ordinary course of its business.

"Governing Documents": A collective term referring to the documents identified in Section 1.3, as they may be amended.

"Member": A Person subject to membership in the Association pursuant to Section 6.2.

"Mortgage": A mortgage, 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.

"Owner": One or more Persons who hold the record title to any Unit, but excluding 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, a trustee, or any other legal entity.

"Properties": The real property described in Exhibit "A," together with such additional property as is made subject to the terms of this Declaration pursuant to Article IX.

"Public Records": The Office of the Register of Deeds of Mecklenburg County, North Carolina, or such other place as may be established for the recording of matters affecting title to real estate in Mecklenburg County, North Carolina.

"Restrictions and Rules": The initial restrictions and rules set forth in Exhibit "C," as they may be supplemented, modified and repealed pursuant to Article III.

"Special Assessment": Assessments levied in accordance with Section 8.2.

"Specific Assessment": Assessments levied in accordance with Section 8.3.

"Supplemental Declaration": An instrument recorded pursuant to Article IX which subjects additional property to this Declaration and/or imposes, expressly or by reference, additional easements, restrictions and/or obligations on the land described in such instrument.

"Unit": A portion of the Properties that is intended for independent ownership, development and use by Persons other than the Association. The term shall not include Common Area or streets or similar areas dedicated to the public.

Article III Use and Conduct

3.1. Liability Insurance; Indemnification.

Each Owner shall at all times maintain comprehensive public liability insurance covering such Owner's Unit and activities within the Properties, with a combined single limit of at least \$1,000,000.00 with respect to bodily injury or death to any one person, at least \$2,000,000.00 with respect to bodily injury or death arising out of any one occurrence, and at least \$1,000,000.00 with respect to property damage arising out of any one occurrence. The Board may increase such minimum requirements by not less than 30 days' written notice to each Owner and in such event, Owners shall obtain insurance meeting such higher requirements. While improvements are under construction on any Unit, the Owner shall maintain or ensure that its contractor maintains builder's risk insurance, worker's compensation insurance, if required by law, and such other insurance as the Board may reasonably require for the protection of the Association and others using the Properties. Each Owner shall indemnify, defend and hold the Association, Blakeney Association, and the Declarant harmless from and against all claims, demands, liabilities, causes of action, and damages arising out of or occurring as a result of violation of the Governing Documents by the Owner or occupants of the Owner's Unit.

3.2. Rules and Restrictions.

Initial Restrictions and Rules governing use and conduct within the Properties are set forth on Exhibit "C." The Board and the Members may modify or expand such Restrictions and Rules in accordance with the following procedures.

(a) Subject to the terms of this Article and the Board's duty to exercise business judgment and reasonableness on behalf of the Association and its Members, the Board may modify, cancel, limit, create exceptions to, or expand the Restrictions and Rules. The Board shall send notice by mail to all Owners concerning any such proposed action at least five business days prior to the Board meeting at which such action is to be considered. Owners shall have a reasonable opportunity to be heard at a Board meeting prior to such action being taken.

Any such action which the Board approves shall become effective, after compliance with subsection (c) below, unless disapproved at a meeting by (i) Class "A" Members representing more than 50% of the total Class "A" votes, and (ii) the Class "B" Member, if any. The Board shall have no obligation to call a meeting of the Members to consider disapproval except upon receipt of a petition of the Members as required for special meetings in the By-Laws. Upon receipt of such a petition prior to the effective date of any Board action under this Section 3.2(a), the proposed action shall not become effective until after such meeting is held, and then subject to the outcome of such meeting.

(b) Alternatively, Members may, at a Association meeting duly called for such purpose, vote to adopt rules which modify, cancel, limit, create exceptions to, or expand the Restrictions and Rules then in effect. Any such action shall require approval of Members representing more than 50% of the total votes in each class of membership whose Units are or will be subject to the rule in question, and approval of the Class "B" Member, if any.

(c) Prior to any action taken under this Section becoming effective, the Board shall send a copy of the new rule or explanation of any changes to the Restrictions and Rules to each Owner. The effective date shall be not less than 30 days following distribution to Owners.

(d) No action taken under this Article shall have the effect of modifying, repealing or expanding the Architectural Guidelines or any provision of this Declaration other than the initial Restrictions and Rules set forth in Exhibit "C," as they may have previously been amended pursuant to this Article. So long as Declarant has any rights under Article IV, Declarant may veto any proposed addition or change to the Restrictions and Rules that it reasonably believes to be inconsistent with the Architectural Guidelines.

(e) The procedures required under this Section 3.2 shall not apply to the enactment and enforcement of administrative policies or regulations governing use and operation of the Common Area unless the Board chooses in its discretion to submit to such procedures. The Board shall exercise business judgment and reasonableness in the enactment, amendment, and enforcement of such administrative policies and regulations.

3.3. Owners' Acknowledgment and Notice to Purchasers.

All Owners are given notice that use of their Units and the Common Area is limited by the Restrictions and Rules as they may be amended, expanded and otherwise modified hereunder. Each Owner, by acceptance of a deed, acknowledges and agrees that the use and enjoyment and marketability of his or her Unit can be affected by this provision and that the Restrictions and Rules may change from time to time. All purchasers of Units are on notice that changes may have been adopted by the Association. Copies of the current Restrictions and Rules may be obtained from the Association upon request of any Member or Mortgagee.

3.4. Protection of Owners and Others.

Except as may be set forth in this Declaration (either initially or by amendment) or in the initial Restrictions and Rules set forth in Exhibit "C," all Restrictions and Rules shall comply with the following provisions:

(a) Similar Treatment. Similarly situated Owners shall be treated similarly.

(b) Signs and Displays. No rule shall prohibit Owners or occupants of Units from displaying signs or lettering identifying a legitimate business operated within the Unit consistent with the Governing Documents; however, the Architectural Guidelines may establish design criteria for any such signs or lettering and the Association may regulate the size, color, type, location and manner of placement of such signs or lettering.

(c) Activities Within Units. No rule shall interfere with the activities carried on within the confines of structures on Units, provided that such activities comply with the Governing Documents and local laws and ordinances, except that the Association may prohibit residential activities within Units and may restrict or prohibit any activities that create monetary costs for the Association or other Owners, that create a danger to the health or safety of persons occupying or visiting other Units, that generate excessive noise or traffic, that create unsightly conditions visible from outside of the structures on Units, or that create an unreasonable source of annoyance to persons outside of the Unit.

(d) Allocation of Burdens and Benefits. No rule shall alter the allocation of financial burdens among the various Units or rights to use the Common Area to the detriment of any Owner over that Owner's objection expressed in writing to the Association. Nothing in this provision shall prevent the Association from changing the Common Area available, from adopting generally applicable rules for use of the Common Area, or from denying use privileges to those who are delinquent in paying assessments or abuse the Common Area or violate the Governing Documents. This provision does not affect the right to increase the amount of assessments as provided in Article VIII.

(e) Alienation. No rule shall prohibit leasing or transfer of any Unit, or require consent of the Association or Board for leasing or transfer of any Unit; however, rules may require Owners to include specific language in their leases to protect the Association's interests.

(f) Abridging Existing Rights. No rule shall require an Owner to dispose of personal property that was kept in or on a Unit prior to the adoption of such rule if such personal property was in compliance with all rules previously in force. This exemption shall apply only during the period of such Owner's ownership of the Unit, and shall not apply to subsequent Owners who take title to the Unit after adoption of the rule.

(g) Reasonable Rights to Develop. No rule or action by the Members or the Board shall unreasonably impede Declarant's right to develop the Properties or other property in Blakeney.

The limitations in subsections (a) through (f) of this Section 3.4 shall only limit rulemaking authority exercised under Section 3.2; they shall not apply to amendments to this Declaration adopted in accordance with Article XVI.

Article IV **Architecture and Landscaping**

4.1. General.

No structure or thing shall be placed, erected, or installed upon any Unit after the date such Unit is made subject to this Declaration, and no improvements or other work (including staking, clearing, excavation, grading and other site work, exterior alterations of existing improvements, or planting or removal of landscaping) shall take place on any portion of the

Properties after the date it is made subject to this Declaration, except in compliance with this Article and the Architectural Guidelines.

Any Owner may make modifications to the interior of structures on such Owner's Unit without approval provided that the modifications are not visible from outside of such structures.

All buildings constructed on or comprising any Unit shall be designed by and built in accordance with the plans and specifications of a licensed architect unless otherwise approved by Declarant or its designee in its sole discretion.

This Article shall not apply to Declarant's activities, nor to activities of the Association during the Class "B" Control Period.

4.2. Architectural Review Committee.

Each Owner agrees that no activity within the scope of this Article, as described in Section 4.1 ("Work"), shall be commenced on such Owner's Unit unless and until the person or committee having jurisdiction under this Section (the "ARC") has given its prior written approval for such Work.

(a) Declarant Authority. Each Owner, by accepting a deed or other instrument conveying any interest in any portion of the Properties, acknowledges that Declarant, as the developer of the Properties and as an Owner of portions of the Properties as well as other real estate within the vicinity of the Properties, has a substantial interest in ensuring that the improvements within the Properties enhance Declarant's reputation as a community developer and do not impair Declarant's ability to market, sell, or lease its property. Therefore, each Owner agrees that no Work shall be commenced on such Owner's Unit unless and until Declarant or its designee has given its prior written approval for such Work, which approval may be granted or withheld in the Declarant's or its designee's sole discretion.

In reviewing and acting upon any request for approval, Declarant or its designee shall be acting solely in Declarant's interest and shall owe no duty to any other Person. Declarant's rights reserved under this Article shall continue so long as Declarant owns any portion of the Properties or any real property adjacent to the Properties, unless earlier terminated in a written instrument executed and recorded by Declarant in the Public Records.

Declarant may, in its sole discretion, designate one or more Persons from time to time to act on its behalf in reviewing applications hereunder.

Declarant may, but shall not be obligated to, delegate from time to time all or a portion of its reserved rights under this Article to (i) a committee appointed by the Board of Directors, or (ii) a committee which Declarant appoints comprised of architects, engineers or other persons who may or may not be Members of the Association. Any such delegation shall be in writing, specifying the scope of responsibilities delegated, and shall be subject to (i) Declarant's right to revoke such delegation at any time and reassume jurisdiction over the matters previously delegated; and (ii) Declarant's right to veto any decision which Declarant determines, in its sole

discretion, to be inappropriate or inadvisable for any reason. So long as Declarant has any rights under this Article, the jurisdiction of the foregoing entities shall be limited to such matters as are specifically delegated to it by Declarant.

(b) Association Authority. Upon delegation by Declarant or upon expiration or termination of Declarant's rights under this Article, the Association, acting through a committee which the Board appoints, shall assume jurisdiction over architectural matters hereunder. The committee, when appointed, shall consist of five persons. The members of the committee need not be Members of the Association or representatives of Members.

Unless and until such time as Declarant delegates all or a portion of its reserved rights to the Association or Declarant's rights under this Article terminate, the Association shall have no jurisdiction over architectural matters.

(c) Fees; Assistance. The Declarant or the Architectural Review Committee, whichever has jurisdiction hereunder (the "Reviewer") may establish and charge reasonable fees for review of applications hereunder and may require such fees to be paid in full prior to review of any application. Such fees may include the reasonable costs incurred in having any application reviewed by architects, engineers or other professionals. Declarant and the Association may retain architects, engineers, or other persons as deemed necessary to perform the review. If retained by the Association, the Association may include the compensation of such persons in the Association's annual operating budget as a Common Expense.

4.3. Guidelines and Procedures.

(a) Architectural Guidelines. Declarant may prepare the initial Architectural Guidelines, which may contain general provisions applicable to all of the Properties as well as specific provisions that may vary according to land use and lot type. The Architectural Guidelines are intended to provide guidance to Owners and Developers regarding matters of particular concern to the Reviewer in considering applications hereunder. The Architectural Guidelines are not the exclusive basis for decisions of the Reviewer and compliance with the Architectural Guidelines does not guarantee approval of any application.

Declarant shall have sole and full authority to amend the Architectural Guidelines as long as it owns any portion of the Properties or has a right to expand the Properties pursuant to Section 9.1, notwithstanding a delegation of reviewing authority to the Association, unless Declarant also delegates the power to amend to the Association. Upon termination or delegation of Declarant's right to amend, the Architectural Review Committee appointed by the Board shall have the authority to amend the Architectural Guidelines with the consent of the Board. Any amendments to the Architectural Guidelines shall be prospective only and shall not apply to require modifications to or removal of structures previously approved once the approved construction or modification has commenced. There shall be no limitation on the scope of amendments to the Architectural Guidelines, and such amendments may remove requirements previously imposed or otherwise make the Architectural Guidelines less restrictive.

The Reviewer shall make the Architectural Guidelines available to Owners and Developers who seek to engage in development or construction within the Properties.

(b) Procedures. Except as otherwise specifically provided in the Architectural Guidelines, no Work shall commence on any portion of the Properties until an application for approval has been submitted to and approved by the Reviewer. Such application shall include plans and specifications ("Plans") showing site layout, structural design, exterior elevations, exterior materials and colors, landscaping, drainage, exterior lighting, irrigation, and other features of proposed construction, as applicable. The Architectural Guidelines and the Reviewer may require the submission of such additional information as may be reasonably necessary to consider any application.

Prior to review of any Plans, the Reviewer may require that the Owner post with the Reviewer, in such forms and amounts as the Reviewer may reasonably determine:

(i) a performance bond to insure that all Work, including landscaping, is completed in accordance with the approved Plans; and

(ii) a compliance bond to be drawn upon as necessary to cover costs incurred by the Reviewer or the Association in (A) repairing damage to or removing trash from any portion of the Properties necessitated by the activities of the Owner, its agents, contractors, or subcontractors; and (B) providing maintenance or exercising other self-help to cure noncompliance with the Governing Documents, construction rules, or breach of other obligations of the Owner, its contractors or subcontractors under any contract between the Owner and the Association or the Declarant relating to such Owner's Unit.

In reviewing each submission, the Reviewer may consider any factors it deems relevant, including, without limitation, harmony of external design with surrounding structures and environment. Decisions may be based on purely aesthetic considerations. Each Owner acknowledges that determinations as to such matters are purely subjective and opinions may vary as to the desirability and/or attractiveness of particular improvements.

The Reviewer shall make a determination on each application within 30 days after receipt of a completed application and all required information.

If Declarant has delegated any of its authority hereunder, then until expiration of Declarant's rights under this Article, the Reviewer shall notify Declarant in writing within three business days after the Reviewer has approved any application pursuant to such delegated authority. The notice shall be accompanied by a copy of the application and any additional information which Declarant may require. Declarant shall have 10 days after receipt of such notice to veto any such action, in its sole discretion, by written notice to the Reviewer.

The Reviewer shall notify the applicant in writing of the final determination on any application within five days thereafter or, with respect to any determination subject to Declarant's veto right, within five days after the earlier of: (i) receipt of notice of Declarant's veto or waiver

thereof; or (ii) expiration of the 10-day period for exercise of Declarant's veto. In the case of disapproval, the Reviewer may, but shall not be obligated to, specify the reasons for any objections and/or offer suggestions for curing any objections.

In the event that the Reviewer fails to respond within the time period required above, approval shall be deemed to have been given, subject to Declarant's right to veto approval pursuant to this Section. However, no approval, whether expressly granted or deemed granted, shall be inconsistent with the Architectural Guidelines unless a variance has been granted pursuant to Section 4.5. Notice shall be deemed to have been given at the time the envelope containing the response is deposited with the U. S. Postal Service. Personal delivery of such written notice shall, however, be sufficient and shall be deemed to have been given at the time of delivery to the applicant.

If construction does not commence on a project for which Plans have been approved within one year after the date of approval, such approval shall be deemed withdrawn and it shall be necessary for the Owner to reapply for approval before commencing the proposed Work. Once construction is commenced, it shall be diligently pursued to completion. All Work shall be completed within one year of commencement unless otherwise specified in the notice of approval or unless the Reviewer grants an extension in writing, which it shall not be obligated to do. If approved Work is not completed within the required time, it shall be considered nonconforming and shall be subject to enforcement action by the Association, Declarant or any aggrieved Owner.

The Reviewer may, by resolution, exempt certain activities from the application and approval requirements of this Article, provided such activities are undertaken in strict compliance with the requirements of such resolution.

4.4. No Waiver of Future Approvals.

Each Owner acknowledges that the persons reviewing applications under this Article will change from time to time and that opinions on aesthetic matters, as well as interpretation and application of the Architectural Guidelines, may vary accordingly. In addition, each Owner acknowledges that it may not always be possible to identify objectionable features of proposed Work until the Work is completed, in which case the Reviewer of the Board may or may not choose to require changes to the improvements involved, but the Reviewer may refuse to approve similar proposals in the future. Approval of applications or Plans for any Work done or proposed, or in connection with any other matter requiring approval, shall not be deemed to constitute a waiver of the right to withhold approval as to any similar applications, Plans, or other matters subsequently or additionally submitted for approval.

4.5. Variances.

The Reviewer may authorize variances from compliance with any of its guidelines and procedures when circumstances such as topography, natural obstructions, hardship, or aesthetic or environmental considerations require, but only in accordance with duly adopted rules and regulations. No variance shall (a) be effective unless in writing; (b) be contrary to this Declaration; or (c) preclude the Reviewer from denying a variance in other circumstances. For

purposes of this Section, the inability to obtain approval of any governmental agency, the issuance of any permit, or the terms of any financing shall not be considered a hardship warranting a variance.

4.6. Limitation of Liability.

The standards and procedures established by this Article are intended as a mechanism for maintaining and enhancing the overall aesthetics of the Properties; they do not create any duty to any Person. Review and approval of any application pursuant to this Article is made on the basis of aesthetic considerations only and the Reviewer shall not bear any responsibility for ensuring the structural integrity or soundness of approved construction or modifications, nor for ensuring compliance with building codes and other governmental requirements, nor for ensuring that all dwellings are of comparable quality, value or size or of similar design.

The Reviewer shall have sole and full authority to determine matters of aesthetic judgment and the determination of the Reviewer as to such matters shall be final and shall not be subject to judicial review so long as exercised in accordance with the procedures set forth in this Article.

Declarant, the Association, the Board, any committee, or any member of any of the foregoing, shall not be held liable for soil conditions; drainage or other general site work; any defects in plans revised or approved hereunder; any loss or damage arising out of the action, inaction, integrity, financial condition, or quality of work of any contractor or its subcontractors, employees, or agents, whether or not such contractor has been approved or featured by Declarant to engage in construction in the Properties; or any injury, damages, or loss arising out of the manner or quality of approved construction on or modifications to any Unit. In all matters, the Board, the Reviewer, and the members of each shall be defended and indemnified by the Association as provided in the By-Laws.

4.7. Certificate of Compliance.

Any Owner may request that the Reviewer issue a certificate of architectural compliance certifying that there are no known violations of this Article or the Architectural Guidelines. The Association shall either grant or deny such request within 30 days after receipt of a written request and may charge a reasonable administrative fee for issuing such certificates. Issuance of such a certificate shall preclude the Association from taking enforcement action with respect to any condition as to which the Association had actual notice as of the date of such certificate.

Article V Maintenance and Repair

5.1. Maintenance of Units.

Each Owner shall maintain such Owner's Unit and all landscaping and improvements comprising the Unit in a manner consistent with the Governing Documents, the Community-Wide Standard and all applicable covenants, unless such maintenance responsibility is otherwise assumed by or assigned to the Association or an Additional Association pursuant to this

Declaration, any Supplemental Declaration, or any other declaration of covenants applicable to such Unit.

Notwithstanding the Association's responsibility for landscape maintenance under Section 7.2, Owners shall be responsible for installing an irrigation system to serve landscaped areas on their Unit and irrigating such areas as needed to maintain them in a healthy condition. Owners shall also be responsible for removal and replacement of diseased or dead plant material, subject to the provisions of Article IV.

5.2. Maintenance by Additional Associations.

Any Additional Association shall maintain its common property and any other property for which it has maintenance responsibility in a manner consistent with the responsibilities of Owners under Section 5.1 and with the Governing Documents, the Community-Wide Standard, and all applicable covenants.

The Association may assume the maintenance responsibility of any Additional Association, either by agreement with the Additional Association or because, in the opinion of the Board, the level and quality of maintenance then being provided is not consistent with the Community-Wide Standard. All costs of maintenance pursuant to this paragraph shall be assessed as a Specific Assessment against only the Units subject to the jurisdiction of the Additional Association. The provision of services in accordance with this Section shall not constitute discrimination within a class.

5.3. Responsibility for Repair and Replacement.

Unless otherwise specifically provided in the Governing Documents or in other instruments creating and assigning maintenance responsibility, responsibility for maintenance shall include responsibility for repair and replacement necessary to maintain the property to a level consistent with the Community-Wide Standard.

By virtue of taking title to a Unit, each Owner covenants and agrees with all other Owners and with the Association to carry property insurance for the full replacement cost of all insurable improvements on such Owner's Unit, less a reasonable deductible, unless either an Additional Association (if any) having jurisdiction over the Unit or the Association carries such insurance (which it may, but is not obligated to do hereunder). If the Association assumes responsibility for obtaining any insurance coverage on behalf of Owners, the premiums for such insurance shall be levied as a Specific Assessment against the benefited Unit and the Owner.

Each Owner further covenants and agrees that in the event of damage to or destruction of structures on or comprising such Owner's Unit, the Owner shall proceed promptly to repair or to reconstruct in a manner consistent with the original construction or such other plans and specifications as are approved in accordance with Article IV. Alternatively, the Owner shall clear the Unit and maintain it in a neat and attractive landscaped condition consistent with the Community-Wide Standard. The Owner shall pay any costs which are not covered by insurance proceeds.

The requirements of this Section shall apply to any Additional Association in the same manner as if the Additional Association were an Owner and the property for which it has maintenance responsibility were a Unit. Additional covenants applicable to any portion of the Properties may establish more stringent requirements for insurance and more stringent standards for rebuilding or reconstructing structures on the Units within such area and for clearing and maintaining the Units in the event the structures are not rebuilt or reconstructed.

Article VI The Association and its Members

6.1. Function of Association.

The Association has been established for the purpose of administering the Properties in accordance with the Governing Documents. Its responsibilities include, but are not limited to:

(a) management, maintenance, operation and control of the Area of Common Responsibility;

(b) interpretation and enforcement of the Governing Documents;

(c) upholding the Community-Wide Standard within the Properties; and

(d) upon delegation or termination of Declarant's authority under Article IV, administering the architectural review process for the Properties.

6.2. Membership.

Every Owner shall be a Member of the Association. There shall be only one membership per Unit. If a Unit is owned by more than one Person, all co-Owners shall share the privileges of such membership, subject to reasonable Board regulation and the restrictions on voting set forth in Section 6.3(b) and in the By-Laws, and all such co-Owners shall be jointly and severally obligated to perform the responsibilities of Owners. The membership rights of an Owner that is not a natural person may be exercised by any officer, director, partner or trustee, or by the individual designated from time to time by the Owner in a written instrument provided to the Secretary of the Association.

6.3. Voting.

(a) Classes of Membership. The Association initially shall have two classes of membership, Class "A" and Class "B," as follows:

Class "A". All Owners shall be Class "A" Members. Units owned by Class "A" Members shall be assigned votes in accordance with the formula set forth on Exhibit "D".

Class "B". The sole Class "B" Member shall be the Declarant. 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 the By-Laws. Additional rights of the Class "B" Member are specified in the relevant sections of the Governing Documents. After termination of the Class "B" Control Period, the Class "B" Member shall have a right to disapprove actions of the Board, the membership and committees as provided in the By-Laws. The Class "B" membership shall terminate upon the earlier of:

(i) two years after expiration of the Class "B" Control Period pursuant to Article III of the By-Laws; or

(ii) when, in its discretion, Declarant so determines and declares in a recorded instrument.

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

Article VII Association Powers and Responsibilities

7.1. 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.

(b) Declarant and its designees may convey to the Association personal property and fee title, leasehold or other property interests in any real property, improved or unimproved, described in Exhibits "A" or "B" and the Association shall accept any such property; provided, Declarant and its designees shall not convey any real property to the Association which Declarant or its designees know or have reason to believe is contaminated with hazardous substances in such amounts as would require remediation under state or federal law. If Declarant conveys property to the Association as Common Area at no cost to the Association, the Association shall, upon Declarant's written request, reconvey to Declarant any unimproved portions of such property, 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 such reasonable rules regulating use of the Common Area as it deems appropriate.

7.2. Maintenance and Operation of Area of Common Responsibility.

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

(a) all portions of the Common Area, including, without limitation, any structures, landscaping, signage, lighting, irrigation systems, sidewalks, and parking areas situated on the Common Area;

(b) all streets and roadways within the Properties, unless and until such time as they are accepted by a public body for perpetual maintenance, and any landscaping within the rights-of-way of streets within the Properties, whether or not dedicated to or accepted by the public;

(c) mowing of grassed areas, pruning of shrubbery, and weeding and mulching of shrub beds on Units, on such schedule as the Board may establish;

(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;

(e) all drainage ditches, structures, pipes and ponds located within the Properties which serve as part of the stormwater drainage system for the Properties, including improvements and equipment installed therein or used in connection therewith; and

(f) any property and facilities within or adjacent to the Properties which are owned by Declarant and designated on the recorded plat encompassing such property as Common Area or otherwise for the primary use and enjoyment of the Owners.

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

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

Except as provided above, the Area of Common Responsibility shall not be reduced by amendment of this Declaration or any other means except with Declarant's prior written approval as long as Declarant owns any property described in Exhibits "A" or "B" of this Declaration.

Except as specifically provided herein, the costs associated with maintenance, repair, replacement, insurance and operation 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.

7.3. 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 assumed 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;

(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;

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

(iv) Directors and officers liability coverage;

(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 an annual 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 Mecklenburg County, North Carolina. All

Association policies shall provide for a certificate of insurance to be furnished to the Association and, upon request, to each Member insured.

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 7.3(a). In the event of an insured loss, the deductible shall be treated as a Common Expense unless 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 tenants, or their respective employees and guests, in which case 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;
- (ii) be written in the name of the Association as trustee for the benefited parties. Policies on the Common Areas shall be for the benefit of the Association and its Members;
- (iii) not be brought into contribution with insurance purchased by Owners, occupants, or their Mortgagees individually;
- (iv) contain an inflation guard endorsement;
- (v) include an agreed amount endorsement, if the policy contains a co-insurance clause;
- (vi) provide that each Owner is an insured person under the policy with respect to liability arising out of such Owner's interest as a member of the Association in the Common Area (provided, this provision shall not be construed as giving an Owner any interest in the Common Area other than that of a Member);
- (vii) provide a waiver of subrogation under the policy against any Owner or occupant of a Unit;
- (viii) include an endorsement precluding cancellation, invalidation, suspension, or non-renewal by the insurer on account of any one or more Owners, or on account of any curable defect or violation without prior written demand to the Association to cure the defect or violation and allowance of a reasonable time to cure; 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, 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 which name the Owners, collectively, 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, and their respective employees, agents, and invitees;

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

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

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

(v) a cross liability provision; and

(vi) 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.

Damaged improvements on the Common Area shall be repaired or reconstructed unless Members representing at least 75% of the total votes attributable to Units entitled to use and enjoy the damaged portion of the Common Area, and the Class "B" Member, if any, decide within 60 days after the loss not to repair or reconstruct. 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 retained by the Association for the

benefit of its Members and placed in a capital improvements account. This is a covenant for the benefit of Mortgagees and may be enforced by the Mortgagee of any affected Unit.

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

7.4. 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 after notice and a hearing in accordance with the procedures set forth in Article VII of the By-Laws. Such sanctions may include, without limitation:

(i) imposing reasonable monetary fines which shall constitute a lien upon the Unit owned or leased by the violator. (In the event that any occupant, employee, or guest of an Owner or tenant violates the Governing Documents, the Owner or tenant, respectively, shall be considered the violator);

(ii) suspending an Owner's right to vote;

(iii) suspending any Person's right to use Common Area facilities other than as necessary for ingress and egress to the Unit owned or occupied by such Person;

(iv) suspending any services which the Association provides to an Owner or the Owner's Unit if the Owner is more than 60 days delinquent in paying any assessment or other charge owed to the Association;

(v) without liability to any Person, precluding any contractor, subcontractor, agent, employee or other invitee of an Owner who fails to comply with the terms and provisions of Article IV and the Architectural Guidelines from continuing or performing any further activities in the Properties; and

(vi) levying Specific Assessments against the benefited Unit or Units pursuant to Section 8.3 to cover costs which the Association incurs to bring any portion of the Properties into compliance with the Governing Documents.

In addition, the Board may take the following enforcement procedures to ensure compliance with the Governing Documents without the necessity of compliance with the procedures set forth in Article VIII of the By-Laws:

(i) requiring an Owner or Additional Association, at its own expense, to perform maintenance on such Owner's Unit or the Additional Association's property, respectively, or to remove any structure, item or improvement on such Owner's Unit in violation of the Governing Documents and to restore the Unit to its previous condition;

(ii) entering the property and exercising self-help to remove or cure a violating condition upon failure of an Owner or an Additional Association to take action as required pursuant to the preceding paragraph within 10 days after receipt of written notice to do so, and any such entry shall not be deemed a trespass;

(iii) exercising self-help in any situation which requires prompt action to avoid potential injury or damage or unreasonable inconvenience to other persons or their property (specifically including, but not limited to, the towing of vehicles that are in violation of parking rules and regulations); or

(iv) bringing suit at law or in equity to enjoin any violation or to recover monetary damages or both, subject to the procedures set forth in Article XII, if applicable.

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.

(b) The decision to have the Association 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. Without limiting the generality of the foregoing sentence, the Board may determine that, under the circumstances of a particular case:

(i) the Association's position is not strong enough to justify taking any or further action; or

(ii) the covenant, restriction or rule being enforced is, or is likely to be construed as, inconsistent with applicable law; or

(iii) although a technical violation may exist or may have occurred, it is not of such a material nature as to be objectionable to a reasonable person or to justify expending the Association's resources; or

(iv) it is not in the Association's best interest, based upon hardship, expense, or other reasonable criteria, to pursue 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 covenant, restriction or rule, nor shall it preclude any Owner from taking action at law or in equity to enforce the Governing Documents.

The Association, by contract or other agreement, may enforce applicable county ordinances and permit Mecklenburg County to enforce ordinances within that portion of the Properties lying within their respective jurisdictions for the benefit of the Association and its Members.

7.5. 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. Except as otherwise specifically provided in the Governing Documents or by law, the Board may exercise all rights and powers of the Association without 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 Section 6.1 of the By-Laws.

7.6. Safety and Security.

Each Owner and occupant of a Unit, and their employees, guests, and invitees, shall be responsible for their own personal safety and the security of their property within the Properties. The Association may, but shall not be obligated to, maintain or support certain activities within the Properties designed to enhance the level of safety or security that each person provides for himself and his property. Neither the Association nor Declarant shall in any way be considered insurers or guarantors of security within the Properties, nor shall either be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken. No representation or warranty is made that any systems installed or measures implemented or undertaken cannot be compromised or circumvented, nor that any such systems or measures will in all cases prevent loss or provide the detection or protection for which the system is designed or intended. Each Owner acknowledges, on behalf of its tenants and all occupants of its Unit, that the Association, its Board and committees, and Declarant are not guarantors of security or safety and that each Person using the Properties assumes all risks of personal injury and loss or damage to property, including Units and the contents of Units, resulting from acts of third parties.

7.7. Provision of Services.

The Association may provide, or provide for, services and facilities for the Members and their Units, and shall be authorized to enter into and terminate contracts or agreements with other entities, including Declarant, to provide such services and facilities. The Board may charge use or service fees for any such services and facilities provided at the option of an Owner, or may include the costs thereof in the Association's budget as a Common Expense and assess it as part

of the Base Assessment if provided to all Units. By way of example, such services and facilities might include landscape maintenance, cable television service, community intranet access, security, lighting, and similar services and facilities.

Nothing in this Section shall be construed as a representation by Declarant or the Association as to what, if any, services shall be provided. In addition, the Board shall be permitted to modify or cancel existing contracts for services in its discretion, unless the provision of such services is otherwise required by the Governing Documents. Non-use of services provided to all Owners or Units as a Common Expense shall not exempt any Owner from the obligation to pay assessments for such services.

7.8. Relationships with Other Properties.

The Association may enter into contractual agreements, easements and covenants to share costs with the owner(s) of any neighboring property to contribute funds for, among other things, shared or mutually beneficial property or services and/or a higher level of Common Area maintenance.

Article VIII Association Finances

8.1. Budgeting for and Allocating Association Expenses.

(a) The Association is hereby authorized to levy assessments for expenses which it incurs or expects to incur in performing its responsibilities and exercising its rights and powers under this Declaration, the other Governing Documents, and applicable law, specifically including but not limited to:

(i) expenses of maintaining, repairing, replacing, operating and insuring the Area of Common Responsibility, including amounts due to third parties who perform such tasks on behalf of the Association;

(ii) the cost of insurance and fidelity bond coverage obtained pursuant to Article VII;

(iii) expenses of monitoring and enforcing compliance with the Governing Documents and any other covenants applicable to the Properties;

(iv) expenses arising out of the Association's indemnification obligations under the By-Laws;

(v) expenses arising out of any measures undertaken to enhance safety or security within the Properties pursuant to Section 7.6;

(vi) expenses arising out of its exercise of architectural control under Article IV;

(vii) expenses of managing the Association, including compensation of management personnel, maintaining books and records, handling Association funds, providing financial reports, and corresponding with Owners, postage and copying expense, and the cost of office supplies and equipment necessary or desirable to perform its responsibilities;

(viii) legal, accounting and other professional fees; and

(ix) such other expenses as the Board of Directors deems necessary or desirable to keep the Properties in good, clean and attractive condition, including expenses incurred in bringing any portion of the Properties into compliance with this Declaration.

In addition, the Association shall be responsible for collecting and paying to Blakeney Association in a timely manner the amount of all General and Special Assessments levied by Blakeney Association against Units within the Properties, as provided in the Blakeney Covenant.

(b) 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 of the Association for the coming year. 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 levied against the Units, and the amount estimated to be generated through the levy of assessments against the Units.

The estimated expenses in each 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 life of each, the expected repair or replacement cost, and the contribution required to fund the projected need by annual contributions over the expected useful life of the asset.

(c) Calculation of Base Assessments. Upon determining the total amount of income required to be generated through the levy of Base Assessments, the Association shall allocate such amount among the Units subject to assessment pursuant to Section 8.6 in accordance with the formula set forth on Exhibit "D" and shall assess such amount to each such Unit as a Base Assessment.

Declarant may, but shall not be obligated to, reduce the Base Assessment rate per Equivalent Unit (as defined on Exhibit "D") for any fiscal year by payment of a subsidy (in addition to any amounts paid by Declarant under Section 8.4(b)), which may be either a contribution, an advance against future assessments due from Declarant, or a loan, in Declarant's discretion. Any such subsidy shall be 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.

(d) Notice of Budget and Assessment. The Board shall send a copy of the final budget to the Owner of each Unit with notice of the amount of the Base Assessment to be levied pursuant to such budget, except that in the case of Units subject to the jurisdiction of any Additional Association, such notice shall be sent to the Additional Association on behalf of all Units subject to its jurisdiction.

If 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 assessments levied pursuant thereto from time to time during the year, subject to the same notice requirements and rights to disapprove the revised budget as set forth above.

8.2. Special Assessments.

In addition to other authorized assessments, the Association may levy Special Assessments to cover unbudgeted expenses or expenses in excess of those budgeted. Except as otherwise specifically provided in this Declaration, any Special Assessment shall require the affirmative vote or written consent of Members entitled to cast more than 50% of the total votes allocated to Units which will be subject to such Special Assessment, and the affirmative vote or written consent of the Class "B" Member, if such exists. Special Assessments shall be payable in such manner and at such times as determined by the Board, and may be payable in installments extending beyond the fiscal year in which the Special Assessment is approved.

8.3. Specific Assessments.

The Association shall have the power to levy Specific Assessments against a particular Unit or Units as follows:

(a) to cover the costs, including overhead and administrative costs, of providing services to Units upon request of an Owner pursuant to any menu of special services which may be offered by the Association pursuant to Section 7.7. Specific Assessments for special services may be levied in advance of the provision of the requested service; and

(b) to cover costs incurred in bringing the Unit into compliance with the Governing Documents, or 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 under this subsection (b); and

(c) to cover costs incurred or expected to be incurred by the Association to set up, clean up, provide additional security, utilities or other services in connection with any promotion or special events sponsored by the Owners or tenants of any Unit or group of Units, upon the Board's determination, in the exercise of its business judgment, that such services are necessary or appropriate.

8.4. Obligation for Assessments.

(a) Personal Obligation. Each Owner, by accepting a deed or entering into a recorded contract of sale for any portion of the Properties, is deemed to covenant and agree to pay all assessments authorized in the Governing Documents; provided, in the case of Units subject to the jurisdiction of an Additional Association, the Additional Association shall be personally obligated to bill, collect on behalf of the Association and to pay over to the Association in a timely manner all Base Assessments and Special Assessments levied pursuant to this Declaration against the Units subject to its jurisdiction. All assessments, together with interest (computed from its due date at a rate of 10% per annum or such higher rate as the Board may establish, subject to the limitations of North Carolina law), late charges in such amount as the Board may determine (subject to the limitations of North Carolina law), costs, and reasonable attorneys' fees, shall be the personal obligation of each Owner and a lien upon each Unit 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.

Failure of the Board to fix assessment amounts or rates or to deliver or mail each Owner or Additional Association an assessment notice shall not be deemed a waiver, modification, or a release of any Owner or Additional Association from the obligation to pay assessments. In such event, each Owner and Additional Association shall continue to pay Base Assessments on the same basis as during the last year for which an assessment was made, if any, until a new budget becomes effective and a new assessment is levied pursuant thereto. Any such budget may include as an expense item any shortfall in amounts previously collected.

No Owner or Additional Association may exempt himself from liability for assessments by non-use of Common Area, abandonment of the Unit, or any other means. The obligation to pay assessments is a separate and independent covenant on the part of each Owner and Owners Association. 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.

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

(b) Declarant's Option to Fund Budget Deficits. During the Class "B" Control Period, Declarant may satisfy its obligation for assessments on Units it owns that are subject to assessment under Section 8.6 either by paying such assessments in the same manner as any other Owner or by paying the difference between (i) the amount of assessments levied on all other Units subject to assessment, plus any other income received by the Association (including interest, fines and incidental income) and any surplus from prior years; and (ii) the amount of actual expenditures by the Association during the fiscal year (excluding capital improvement

costs and reserves). Unless Declarant otherwise notifies the Board in writing at least 60 days before the beginning of each fiscal year, Declarant shall be deemed to have elected to continue paying on the same basis as during the immediately preceding fiscal year. Regardless of Declarant's election, Declarant's obligations hereunder may be satisfied in the form of cash or by "in kind" contributions of services or materials, or by a combination of these. After termination of the Class "B" Control Period, Declarant shall pay assessments on its unsold Units in the same manner as any other Owner.

8.5. Delinquencies; Lien for Assessments.

If any Owner or Additional 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.

The Association shall have a lien against each Unit to secure payment of delinquent assessments, as well as interest, late charges (subject to the limitations of North Carolina law), and costs of collection (including attorneys' fees). Such lien shall be prior and superior to all other liens except (a) the lien of any first Mortgage of record; and (b) tax and other liens which by statute have priority, and (c) the lien in favor of Blakeney Association securing assessments levied pursuant to the Blakeney Covenant. When delinquent, such lien may be perfected and enforced by suit, judgment, and/or foreclosure in the manner provided for the foreclosure of Mortgages under North Carolina law, as amended. In the case of delinquencies in any amount to be paid by any Additional Association, the Association shall have a lien against each Unit subject to the jurisdiction of the Additional Association for its pro rata share of any delinquency; provided, upon proof of payment of all assessments levied against a particular Unit, the Board may, but shall not be obligated to, release the lien as to that Unit and increase the amount secured by liens on other Units subject to the jurisdiction of the Additional Association.

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.

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 to 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 8.6, including such acquirer, its successors and assigns.

8.6. Authority to Assess Owners; Time of Payment.

The obligation to pay assessments as provided for in this Article shall commence as to each Unit on the first day of the month following the later of: (a) the month in which the Unit is made subject to this Declaration; or (b) the month in which temporary or permanent vehicular access is made available to the Unit to enable construction on the Unit to begin; provided, any portion of the Properties owned by Declarant shall not be subject to assessment until Declarant has recorded a subdivision plat in the Public Records relating to such portion of the Properties. The first annual Base Assessment levied on each Unit shall be adjusted according to the number of months remaining in the fiscal year at the time assessments commence on the Unit.

Assessments shall be paid in such manner and on such dates as the Board may establish. The Board may require advance payment of assessments at closing of the transfer of title to a Unit and impose special requirements for Owners with a history of delinquent payment. If the Board so elects, assessments may be paid in two or more installments. Unless the Board otherwise provides, the Base Assessment shall be due and payable in advance on the first day of each fiscal year. If any Owner is delinquent in paying any assessments or other charges levied on such Owner's Unit, the Board may require the outstanding balance on all assessments to be paid in full immediately.

8.7. Exempt Property.

The following property shall be exempt from payment of Base 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 the public and accepted by any governmental authority or public utility.

Article IX Expansion of the Community

9.1. Expansion by Declarant.

Declarant may from time to time expand the Properties to include all or any portion of the property described on Exhibit "B" by recording a Supplemental Declaration in the Public Records describing the additional property and stating the intent to subject 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 the Properties pursuant to this Section shall expire when all of the property described in Exhibit "B" has been subjected to this Declaration or 15 years after this Declaration is recorded in the Public Records, whichever is earlier. Until then, Declarant may transfer or assign this right to any Person who is the developer of at least a portion of the real

property described in Exhibits "A" or "B." Any such transfer shall be memorialized in a written, recorded instrument executed by Declarant.

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.

9.2. Expansion by the Association.

The Association may also expand the Properties to include additional property by recording a Supplemental Declaration in the Public Records describing the additional property and the intent to subject it to the provisions of this Declaration. Any such Supplemental Declaration shall require the affirmative vote of Members representing more than 50% of the Class "A" votes represented at a meeting duly called for such purpose and the consent of the owner of the additional 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 9.1, 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 additional property, and by Declarant, if Declarant's consent is necessary.

9.3. Additional Covenants and Easements.

Declarant may subject any portion of the Properties 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.

9.4. Effect of Filing Supplemental Declaration.

A Supplemental Declaration shall be effective upon recording in the Public Records 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 X Additional Rights Reserved to Declarant

10.1. Withdrawal of Property.

So long as Declarant has a right to expand the Properties pursuant to Section 9.1, Declarant reserves the right to amend this Declaration for the purpose of withdrawing from the

coverage of this Declaration any portion of the Properties which has not yet been improved with structures. 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.

10.2. Right to Approve Changes in Community Standards.

So long as Declarant owns property subject to this Declaration or which may become subject to this Declaration in accordance with Section 9.1, no amendment to or modification of any Restrictions and Rules or Architectural Guidelines shall be effective without prior notice to and the written approval of Declarant.

10.3. Development and Sales Activities.

Until Declarant has recorded a written statement in the Public Records that all sales activity has ceased or 20 years from the date this Declaration is recorded, whichever is earlier:

(a) Declarant and Developers authorized by Declarant may construct and maintain upon portions of the Common Area such facilities and activities as Declarant, in its 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 authorized Developers shall have easements for access to and use of such facilities 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.

10.4. Control of and Changes in Development Plan.

(a) Every Person that acquires any interest in the Properties acknowledges that Blakeney is a master planned community, the development of which is likely to extend over a period of years, and that changes in the master plan may occur as such development proceeds. Each such Person therefore agrees not to protest, challenge or otherwise object to changes made or proposed by Declarant in the development plan or in the uses or density of property beyond that immediately adjacent to the Unit in which such Person holds an interest.

(b) No Person shall record any declaration of covenants, conditions and restrictions, or declaration of condominium or similar instrument affecting any portion of the Properties 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 in the Public Records.

(c) The rights and limitations set forth in this Section 10.4 shall continue in effect until Declarant has recorded a written statement in the Public Records that all sales activity has ceased or 20 years from the date this Declaration is recorded, whichever is earlier

10.5. 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 and recorded by Declarant. 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.

10.6. Right to Notice of Design or Construction Claims.

No Person shall retain an expert for the purpose of inspecting the design or construction of any structures or improvements constructed by Declarant within the Properties in connection with or in anticipation of any potential or pending claim, demand or litigation involving such design or construction unless Declarant involved in the design or construction has been first notified in writing and given an opportunity to meet with the Owner of the property to discuss the matter and conduct its own inspection pursuant to the rights reserved in Section 11.7.

Article XI Easements

11.1. 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;
 - (ii) suspend the right of an Owner or occupant to use facilities within the Common Area (A) for any period during which any charge against such Owner's Unit remains delinquent, and (B) for a period not to exceed 30 days for a single violation or for a longer period in the case of any continuing violation, of the Governing Documents after notice and a hearing pursuant to the By-Laws;
 - (iii) dedicate or transfer all or any part of the Common Area, subject to such approval requirements as may be set forth in this Declaration; and

(iv) mortgage, pledge, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred.

Any Owner may extend his or her right of use and enjoyment to the tenants and occupants of such Owner's Unit and their employees and invitees, as applicable, subject to reasonable regulation by the Board. An Owner whose Unit is leased shall be deemed to have assigned all such rights to the lessee for the period of the lease.

11.2. Easements of Encroachment.

Declarant grants reciprocal appurtenant easements of encroachment, and for maintenance and use of any permitted encroachment, between each Unit and any adjacent Common Area and between adjacent Units due to the unintentional placement or settling or shifting of the improvements (other than buildings) constructed, reconstructed, or altered thereon (in accordance with the terms of these restrictions) to a distance of not more than two feet, as measured from any point on the common boundary along a line perpendicular to such boundary. However, in no event shall an easement for encroachment exist if such encroachment occurred due to willful and knowing or conduct on the part of, or with the knowledge and consent of, the Person claiming the benefit of such easement.

11.3. Easements for Utilities, Etc.

(a) Installation and Maintenance. Declarant reserves for itself, so long as Declarant or owns any property described in Exhibit "A" or "B" of this Declaration, and grants to the Association and all utility providers, perpetual non-exclusive easements throughout the Properties (but not through a structure) to the extent reasonably necessary for the purpose of:

(i) installing utilities and infrastructure to serve the Properties, cable and other systems for sending and receiving data and/or other electronic signals, security and similar systems, walkways, pathways and trails, stormwater drainage systems, irrigation systems, sanitary sewer 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;

(ii) inspecting, maintaining, repairing and replacing the utilities, infrastructure and other improvements described in Section 11.3(a)(i); and

(iii) access to read utility meters.

(b) Right to Grant 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.

11.4. Easements to Serve Additional Property.

Declarant hereby reserves for itself and its duly authorized agents, successors, assigns, and mortgagees, a perpetual, nonexclusive 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. 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.

11.5. Easements for Maintenance, Emergency and Enforcement.

Declarant grants to the Association easements over the Properties as necessary to enable the Association to fulfill its maintenance responsibilities under Section 7.2. The Association shall also have the right, but not the obligation, to enter upon any Unit for emergency, security, and safety reasons, to perform maintenance and to inspect for the purpose of ensuring compliance with and enforce the Governing Documents. Such right may be exercised by any member of the Board and its duly authorized agents and assignees, and all emergency personnel in the performance of their duties. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner.

11.6. Easements for Pond Maintenance and Flood Water.

Declarant reserves for itself, and grants to the Association, and their respective successors, assigns, and designees, the nonexclusive right and easement to enter upon any portion of the Properties adjacent to the Common Area for ingress, egress and access to the Common Area in order to (a) construct, improve, maintain, and repair structures and equipment used for retaining, detaining, or draining stormwater; and (b) maintain such areas in a manner consistent with the Community-Wide Standard.

Declarant further reserves for itself, and grants to the Association, and their respective successors, assigns and designees, a perpetual, nonexclusive right and easement of encroachment over portions of the Properties adjacent to or within 50 feet of any detention pond within the Common Area in order to accommodate temporary flooding.

All persons entitled to exercise these easements shall use reasonable care in and repair any damage resulting from the intentional exercise of such easements.

11.7. 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 Properties, including Units, and a perpetual, nonexclusive easement of access throughout the Properties 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 without the consent of the Owner. The person exercising this easement shall promptly repair, at such person's own expense, any damage resulting from such exercise.

11.8. Easement for Erosion Control.

Declarant reserves for itself, its successors and assigns, and grants to the Association a perpetual, non-exclusive easement to enter upon any portion of the Properties for the purpose of implementing such erosion control measures as Declarant or the Association deem necessary to prevent or correct soil erosion or siltation thereon; provided, nothing herein shall be deemed to create any liability or obligation on the part of Declarant or the Association to take exercise such easement or take any such action. Except in the case of an emergency threatening property or giving rise to a violation of law (in which case no prior notice or opportunity to cure shall be required), no person seeking to exercise this easement shall enter upon any Unit unless such person has first given at least 10 days' written notice to the Owner of the Unit specifying the action required and the Owner has failed to take the required action within such 10-day period. The Association may assess any costs which the Association incurs in undertaking erosion control measures on any Unit pursuant to this Section against the Unit and the Owner thereof as a Specific Assessment.

Article XII Dispute Resolution and Limitation on Litigation

12.1. Agreement to Encourage Resolution of Disputes Without Litigation.

(a) Declarant, the Association and its officers, directors, and committee members, all Persons subject to this Declaration, and any Person not otherwise subject to this Declaration who agrees to submit to this Article (collectively, "Bound Parties"), agree that it is in the best interest of all concerned to encourage the amicable resolution of disputes involving the Properties without the emotional and financial costs of litigation. Accordingly, each Bound Party agrees not to file suit in any court with respect to a Claim described in subsection (b), unless and until it has first submitted such Claim to the alternative dispute resolution procedures set forth in Section 12.2 in a good faith effort to resolve such Claim.

(b) As used in this Article, the term "Claim" shall refer to any claim, grievance or dispute arising out of or relating to

(i) the interpretation, application, or enforcement of the Governing Documents;

(ii) the rights, obligations, and duties of any Bound Party under the Governing Documents; or

(iii) the design or construction of improvements within the Properties, other than matters of aesthetic judgment under Article IV, which shall not be subject to review;

except that the following shall not be considered "Claims" unless all parties to the matter otherwise agree to submit the matter to the procedures set forth in Section 12.2:

(i) any suit by the Association to collect Assessments or other amounts due from any Owner;

(ii) any suit by the Association to obtain a temporary restraining order (or emergency equitable relief) and such ancillary relief as the court may deem necessary in order to maintain the status quo and preserve the Association's ability to enforce the provisions of Articles III, IV, and V of this Declaration;

(iii) any suit between Owners, which does not include Declarant or the Association as a party, if such suit asserts a Claim which would constitute a cause of action independent of the Governing Documents;

(iv) any suit in which any indispensable party is not a Bound Party; and

(v) any suit as to which any applicable statute of limitations would expire within 180 days of giving the Notice required by Section 12.2(a), unless the party or parties against whom the Claim is made agree to toll the statute of limitations as to such Claim for such period as may reasonably be necessary to comply with this Article.

12.2. Dispute Resolution Procedures.

(a) Notice. The Bound Party asserting a Claim ("Claimant") against another Bound Party ("Respondent") shall give written notice to each Respondent and to the Board stating plainly and concisely:

(i) the nature of the Claim, including the Persons involved and the Respondent's role in the Claim;

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

(iii) the Claimant's proposed resolution or remedy; and

(iv) the Claimant's desire to meet with the Respondent to discuss in good faith ways to resolve the Claim.

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

(c) Mediation. If the parties have not resolved the Claim through negotiation within 30 days of the date of the notice described in Section 12.2(a) (or within such other period as the parties may agree upon), the Claimant shall have 30 additional days to submit the Claim to mediation with an entity designated by the Association (if the Association is not a party to the Claim) or to an independent agency providing dispute resolution services in the Mecklenburg County, North Carolina area.

If the Claimant does not submit the Claim to mediation within such time, or does not appear for the mediation when scheduled, the Claimant shall be deemed to have waived the Claim, and the Respondent shall be relieved of any and all liability to the Claimant (but not third parties) on account of such Claim.

If the Parties do not settle the Claim within 30 days after submission of the matter to mediation, or within such time as determined reasonable by the mediator, the mediator shall issue a notice of termination of the mediation proceedings indicating that the parties are at an impasse and the date that mediation was terminated. The Claimant shall thereafter be entitled to file suit or to initiate administrative proceedings on the Claim, as appropriate.

Each Party shall bear its own costs of the mediation, including attorneys' fees, and each Party shall share equally all fees charged by the mediator.

(d) Settlement. Any settlement of the Claim through negotiation or mediation shall be documented in writing and signed by the parties. If any party thereafter fails to abide by the terms of such agreement, then any other party may file suit or initiate administrative proceedings to enforce such agreement without the need to again comply with the procedures set forth in this Section. In such event, the party taking action to enforce the agreement or award shall, upon prevailing, be entitled to recover from the non-complying party (or if more than one non-complying party, from all such parties in equal proportions) all costs incurred in enforcing such agreement or award, including, without limitation, attorneys' fees and court costs.

12.3. Initiation of Litigation by Association.

In addition to compliance with the foregoing alternative dispute resolution procedures, if applicable, the Association shall not initiate any judicial or administrative proceeding unless first approved by a vote of Members entitled to cast 75% of the total Class "A" votes in the Association, except that no such approval shall be required for actions or proceedings:

- (a) initiated during the Class "B" Control Period;
- (b) initiated to enforce the provisions of this Declaration, including collection of assessments and foreclosure of liens;

- (c) initiated to challenge ad valorem taxation or condemnation proceedings;
- (d) initiated against any contractor, vendor, or supplier of goods or services arising out of a contract for services or supplies; or
- (e) to defend claims filed against the Association or to assert counterclaims in proceedings instituted against it.

This Section shall not be amended unless such amendment is approved by the same percentage of votes necessary to institute proceedings.

Article XII Mortgage Provisions

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 Holder"), will be entitled to timely written notice of:

- (a) Any condemnation loss or any casualty loss which affects a material portion of the Properties or which affects any Unit on which there is a first Mortgage held, insured, or guaranteed by such Eligible Holder;
- (b) Any delinquency in the payment of assessments or charges owed by a Unit subject to the Mortgage of such Eligible Holder, where such delinquency has continued for a period of 60 days, or any other violation of the 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.

Article XVII Covenant to Share Costs

The Declarant shall have the authority to cause the Association to enter into a Covenant to Share Costs with Blakeney Association or any Owners Association(s) or owners of other property within or adjacent to Blakeney providing for a reasonable allocation between the parties of the costs of providing shared services or benefits, and maintaining, operating, insuring and replacing any property and facilities owned or maintained by one party and made available for use by, or providing a common benefit to the members of each. Such shared services and properties may include, but need not be limited to, security services; stormwater management; parks and trails; irrigation systems; landscaping, and community entry monumentation. Any such Covenant to Share Costs may also establish such easements over the Properties as may reasonably be necessary to provide such shared benefits and services. All costs allocated to the

Association under any such Covenant to Share Costs shall be a Common Expense of the Association and assessed against each Unit in accordance with Article IX.

Article XIV Changes in Ownership of Units

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

Article XV Changes in Common Area

15.1. Condemnation.

If any part of the Common Area shall be taken (or conveyed in lieu of and under threat of condemnation by the Board acting on the written direction of Members representing at least 67% of the total Class "A" votes in the Association and of Declarant, as long as Declarant owns any property subject to the Declaration or which may be made subject to the Declaration in accordance with Section 9.1) 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 or proceeds from such conveyance. Such award or proceeds shall be payable to the Association to 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, so long as Declarant owns any property subject to the Declaration or which may be made subject to the Declaration in accordance with Section 9.1, and Members representing at least 75% of the total Class "A" votes in the Association shall otherwise agree. Any such construction shall be in accordance with plans approved by the Board. The provisions of Section 7.3(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 disbursed to the Association and used for such purposes as the Board shall determine.

By virtue of membership in the Association, each Owner is precluded from protesting, challenging, or otherwise contesting any action of the Association taken pursuant to this Section 15.1.

15.2. Partition.

Except as permitted in this Declaration, the Common Area shall remain undivided, and no Person shall bring any action for the partition of any portion of the Common Area without the written consent of all Owners and Mortgagees. 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.

15.3. Transfer or Dedication of Common Area.

The Association, acting through the Board, may transfer or dedicate portions of the Common Area to Blakeney Association, Mecklenburg County, North Carolina, or to any other local, state, or federal governmental or quasi-governmental entity.

Article XVI Amendment of Declaration

16.1. By Declarant.

In addition to specific amendment rights granted elsewhere in this Declaration, until termination of the Class "B" Control Period Declarant may unilaterally amend this Declaration for any reason. Thereafter, Declarant may unilaterally amend this Declaration if such amendment is necessary (a) to bring any provision into compliance with any applicable governmental statute, rule, regulation, or judicial determination; (b) to enable any reputable title insurance company to issue title insurance coverage on the Units; or (c) to satisfy the requirements of any local, state or federal governmental agency. However, no amendment pursuant to this Section that would adversely affect the title to any Unit shall be binding on such Unit unless the Owner shall consent in writing.

16.2. 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 Members representing at least 75% of the total Class "A" votes in the Association and the consent of Declarant, so long Declarant owns any property subject to this Declaration or which may become subject to this Declaration in accordance with Section 9.1.

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.

16.3. 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 the Declarant or the Class "B" Member, respectively (or the assignee of such right or privilege).

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

Any amendment shall become effective upon recording in the Public Records, unless a later effective date is specified in the amendment. Any procedural challenge to an amendment must be made within 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 this Declaration.

16.4. Exhibits.

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

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

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

By: William S. Dabure II
Name: William S. Dabure II
Its: Vice President

Attest: Colleen A. Wear
Name: Colleen A. Wear
Its: Division Finance manager



[corporate seal]

STATE OF NORTH CAROLINA

COUNTY OF MECKLENBURG

I, the undersigned Notary Public of the County and State aforesaid, certify that William E. Daley personally came before me this day and acknowledged that he is the Vice President of Crosland, Inc., a North Carolina corporation, general partner of Blakeney Heath Limited Partnership, a North Carolina limited partnership, and that by the authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by William E. Daley, its Vice President, sealed with the corporate seal and attested by Colleen A. wear, its Secretary.

Witness my hand and official seal this 14th day of August, 2003.

[NOTARY SEAL]

Rhonda R. Bishop
Notary Public
My Commission Expires: May 7, 2008

511216/CADocs/Blakeney CommerCCR/070103/JPS

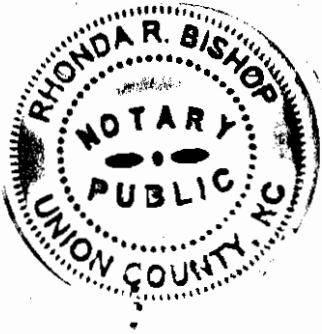


EXHIBIT "A"

Property Initially Submitted

ALL THAT TRACT OR PARCEL OF LAND lying and being in Providence Township, Mecklenburg County, North Carolina and being more particularly described as follows:

Beginning at an existing iron pin marking the northeast corner of Lot 28 of Landon Meadows Phase 2-A as shown on the subdivision plat thereof recorded in Map Book 24, Page 168, in the Office of the Register of Deeds of Mecklenburg County, North Carolina, and the southeast corner of Lot 81 of Coventry at Landon Meadows, Map 2, as shown on the subdivision plat thereof recorded in Map Book 23, Page 778, aforesaid records, thence running S15°57'17"E a distance of 62.91 feet to a point; thence N57°22'43"E a distance of 103.12 feet to a point; thence N51°58'49"E a distance of 483.82 feet to a point which is the TRUE POINT OF BEGINNING; thence N26°43'44"E a distance of 213.25 feet to a point; thence N61°47'52"W a distance of 15.67 feet to a point; thence N26°43'11" East a distance of 500.53 feet to a point; thence N63°16'49"W a distance of 13.01 feet to a point; thence N27°04'53"E a distance of 229.10 feet to a point; thence S63°02'17"E a distance of 32.00 feet to a point; thence N27°00'00"E a distance of 211.70 feet to a point; thence S63°00'15"E a distance of 98.70 feet to a point; thence S27°00'00"W a distance of 56.66 feet to a point; thence S62°42'13"E a distance of 120.81 feet to a point; thence S25°50'01"W a distance of 24.42 feet to a point; thence S30°27'55"W a distance of 180.80 feet to a concrete monument; thence S26°43'11"W a distance of 75.49 feet to an existing iron pin; thence S72°25'37"W a distance of 56.38 feet to an existing iron pin; thence S26°43'11"W a distance of 65.62 feet to an existing iron pin; thence S26°14'16"E a distance of 65.35 feet to an existing iron pin; thence S26°43'11"W a distance of 355.64 feet to an existing iron pin; thence S72°25'37"W a distance of 56.38 feet to an existing iron pin; thence S26°43'11"W a distance of 65.62 feet to an existing iron pin; thence S18°59'15"E a distance of 56.38 feet to an existing iron pin; thence S26°43'11"W a distance of 171.86 feet to a point; thence N63°16'16"W a distance of 225.44 feet to the POINT OF BEGINNING; said tract consisting of 5.843 acres (254,527. sq. ft.) as shown on a survey map entitled "5.843 Acres Blakeney Heath Limited Partnership" prepared by GeoScience Group, Inc. dated June 19, 2003, and signed and sealed by Scott Alan Tierney, North Carolina Professional Land Surveyor, Registration No. L-3166.

EXHIBIT "B"

Property Subject to Annexation

ALL THAT TRACT OR PARCEL OF LAND lying and being in Providence Township, Mecklenburg County, North Carolina and being more particularly described as follows:

Beginning at an existing iron pin marking the northeast corner of Lot 28 of Landon Meadows Phase 2-A as shown on the subdivision plat thereof recorded in Map Book 24, Page 168, in the Office of the Register of Deeds of Mecklenburg County, North Carolina, and the southeast corner of Lot 81 of Coventry at Landon Meadows, Map 2, as shown on the subdivision plat thereof recorded in Map Book 23, Page 778, aforesaid records, thence running S15°57'17"E a distance of 62.91 feet to the TRUE POINT OF BEGINNING; thence N57°22'43"E a distance of 103.12 feet to a point; thence N51°58'49"E a distance of 483.82 feet to a point; thence N26°43'44"E a distance of 213.25 feet to a point; thence N61°47'52"W a distance of 26.91 feet to a point; thence 280.87 feet along the arc of a curve to the right having a radius of 280.50 feet and being subtended on its northeasterly side by a 269.28 foot chord bearing N34°29'57"W; thence N05°48'48"W a distance of 386.82 feet to a point; thence 116.42 feet along the arc of a curve to the left having a radius of 119.50 feet and being subtended on its southwesterly side by a 111.87 foot chord bearing N33°43'24" West; thence N61°38'01"W a distance of 113.42 feet to a point; thence 194.34 feet along the arc of a curve to the right having a radius of 180.50 feet and being subtended on its northeasterly side by a 185.08 foot chord bearing N30°47'23"W; thence N00°03'14"E a distance of 269.37 feet to a point; thence turning and running in an easterly direction along the southerly right-of-way of East-West Circumferential Roadway, a variable width public right-of-way, 429.01 feet along the arc of a curve to the right having a radius of 5,659.58 feet and being subtended on its southerly side by a 428.91 foot chord bearing N85°55'06"E to a right-of-way monument found on said southerly right-of-way; thence 790.64 feet along the arc of a curve to the right having a radius of 5,659.58 feet and being subtended on its southerly side by a 790.00 foot chord bearing S87°54'28"E to an existing iron pin; thence S83°55'13"E a distance of 17.29 feet to an existing iron pin; thence S51°59'48"E a distance of 78.24 feet to an existing iron pin; thence S26°43'11"W a distance of 238.85 feet to an existing iron pin; thence S25°50'01"W a distance of 297.04 feet to an existing iron pin; thence S30°27'55"W a distance of 180.80 feet to a concrete monument; thence S26°43'11"W a distance of 75.49 feet to an existing iron pin; thence S72°25'37"W a distance of 56.38 feet to an existing iron pin; thence S26°43'11"W a distance of 65.62 feet to an existing iron pin; thence S26°14'16"E a distance of 65.35 feet to an existing iron pin; thence S26°43'11"W a distance of 355.64 feet to an existing iron pin; thence S72°25'37"W a distance of 56.38 feet to an existing iron pin; thence S26°43'11"W a distance of 65.62 feet to an existing iron pin; thence S18°59'15"E a distance of 56.38 feet to an existing iron pin; thence S26°43'11"W a distance of 555.64 feet to an existing iron pin; thence S72°25'37"W a distance of 56.38 feet to an existing iron pin; thence S26°43'11"W a distance of 65.62 feet to an existing iron pin; thence S18°59'15"E a distance of 56.38 feet to an existing iron pin; thence S26°43'12"W a distance of 23.75 feet to an existing iron pin; thence S26°33'23"W a distance of 113.28 feet to an existing iron pin; thence N64°16'54"W a distance of 11.44 feet to an existing iron pin; thence

EXHIBIT "B"

Property Subject to Annexation
(continued)

N63°28'56"W a distance of 157.83 feet to an existing iron pin marking the northwest corner of Lot 21 and the northeast corner of Lot 22 of Landon Meadows Phase 2-A as shown on the aforementioned subdivision map thereof; thence N63°19'20"W a distance of 74.93 feet to an existing iron pin marking the northwest corner of Lot 22 and the northeast corner of Lot 23 of Landon Meadows Phase 2-A as shown on the aforementioned subdivision map thereof; thence N63°15'10"W a distance of 42.23 feet to an existing iron pin marking the northwest corner of Lot 23 and the northeast corner of Lot 24 of Landon Meadows Phase 2-A as shown on the aforementioned subdivision map thereof; thence N63°00'16"W a distance of 69.87 feet to a point; thence N15°57'17"W a distance of 189.60 feet to a point which is the TRUE POINT OF BEGINNING; said tract consisting of 30.155 acres as shown on a survey map entitled "30.155 Acres Blakeney Heath Limited Partnership" prepared by GeoScience Group, Inc. dated June 19, 2003, and signed and sealed by Scott Alan Tierney, North Carolina Professional Land Surveyor, Registration No. L-3166.

TOGETHER WITH:

Such additional real property lying within a one-half mile radius of the perimeter boundaries of the above-described property as the Declarant may hereafter designate (with the consent of the owner thereof);

LESS AND EXCEPT:

The real property described on Exhibit "A."

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" unless and until such property is submitted to the terms of this Declaration by filing a Supplemental Declaration in accordance with Article IX.

EXHIBIT "C"

Initial Restrictions and Rules

The following restrictions shall apply to all of the Properties until such time as they are amended, modified, repealed or limited pursuant to Article III of the Declaration.

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

(a) any activity which tends to cause an unclean, unhealthy or unsafe condition to exist outside of enclosed structures on the Unit;

(b) any activity which emits foul or obnoxious odors, fumes, dust, smoke, or pollution outside the Unit, or which creates noise, unreasonable risk of fire or explosion, or other conditions which are a nuisance; however, nothing herein shall preclude normal and customary operation of any restaurant;

(c) any activity which violates local, state or federal laws, ordinances, codes, or regulations (collectively, "Laws") or the terms of any permits, licenses, or certifications required for the operation of such activity within the Properties;

(d) outside burning of trash, leaves, debris or other materials;

(e) outdoor storage of goods, materials, or equipment, except that (1) outdoor storage of building materials shall be permitted during construction on the Unit on which such materials are being stored; and (2) outdoor dining facilities shall be permitted;

(f) any activity which would constitute a public or private nuisance;

(g) use or discharge of any radio, loudspeaker, horn, whistle, bell, or other sound device so as to be audible to occupants of other Units, except alarm devices used exclusively for security purposes provided they are maintained in proper working order so as to avoid repeated and incessant false alarms and are shut off within a reasonable period of time after sounding an alarm;

(h) generation, storage, or disposal of explosives, radioactive materials, or hazardous, toxic, or dangerous substances, materials, or waste, except in full compliance with all applicable Laws and in such quantities and in a manner which could not reasonably be expected to give rise to liability or an obligation to take remedial or other action under any Laws;

(i) dumping grass clippings, leaves or other debris, petroleum products, fertilizers, garbage, or other potentially hazardous or toxic substances in any storm sewer, drainage ditch, or other component of the storm drainage system serving the Properties, any stream, pond, or lake,

or elsewhere within Blakeney, except that fertilizers may be applied to landscaping on Units provided care is taken to minimize runoff, and Declarant and Developers may dump and bury rocks and trees removed from a building site on such building site;

(j) subdivision of a Unit into two or more Units, or changing the boundary lines of any Unit, without prior written notice to the Association, except that Declarant shall be permitted to subdivide or replat Units which it owns;

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

(m) on-site storage of gasoline, heating, or other fuels, except that a reasonable amount of propane gas and other fuel may be stored on each Unit for heating, emergency purposes and operation of tools or equipment used on the Unit, and the Association shall be permitted to store fuel for operation of maintenance vehicles, generators, and similar equipment. This provision shall not apply to any underground fuel tank authorized pursuant to Article IV;

(o) any rummage sale, fire sale, sidewalk sale, or similar activity;

(p) overnight or regular parking of vehicles or equipment in places other than designated parking areas on the Units with which they are associated; and

(q) any construction, erection, placement, or modification of any thing, permanently or temporarily, on the outside portions of the Unit, whether such portion is improved or unimproved, except as specifically authorized in Paragraph 3(d) of this Exhibit and otherwise in strict compliance with the provisions of Article IV of the Declaration. This shall include, without limitation, signs, lights, dumpsters, storage containers, equipment, hedges, walls, or fences of any kind.

2. Prohibited Uses. In addition to uses that are inconsistent with applicable zoning or are prohibited or restricted by other recorded covenants, conditions, restrictions or easements, the following uses are prohibited within the Properties:

(a) residential uses, including boarding houses and overnight lodging facilities;

(b) trailer courts, mobile home parks, and recreation vehicle campgrounds;

(c) oil, gas or mineral exploration; drilling, boring, excavation, development, refining, quarrying, or mining operations; storage of equipment incident to any such activities, except that nothing herein shall preclude the operation of automobile service stations or water wells, to the extent permitted under the Architectural Guidelines and approved pursuant to Article IV;

(d) junk yards, scrap metal yards, automobile used parts and/or dismantling operations and sanitary landfills, except that nothing herein shall preclude recycling centers established

solely for the collection and sorting of household recyclable materials provided that the same are not unsightly;

(e) dumping, storage, disposal, incineration, treatment, processing or reduction of garbage, or refuse of any nature, except as is incidental to the use, operation and ownership of any property (or a portion thereof) in accordance with this Declaration and in a manner which is not unsightly and does not result in noxious odors emitting from the subject property;

(f) lumberyards, sawmills, or outdoor storage of building or construction materials (except in the usual course of construction on the site where stored);

(g) thrift stores, flea markets, salvage businesses, or discount stores whose merchandise consists primarily of excess inventory, discontinued items and/or goods acquired through liquidation of other businesses or fire or bankruptcy sales;

(h) truck terminals and truck stop-type facilities (specifically excluding loading docks and similar facilities incidental to the use, operation and ownership of any property or a portion thereof in accordance with this Declaration);

(i) spas, tanning parlors, massage parlors, and any establishment which offers entertainment or service by nude or partially dressed male or female persons;

(j) any industrial use; and

(k) "adult entertainment uses," which terms shall mean, for the purposes of this Declaration, any theater or other establishment which shows, previews, or prominently displays, advertises, or conspicuously promotes for sale or rental: (i) movies, films, videos, magazines, books, or other medium (whether now or hereafter developed) which is rated "X" by the movie production industry (or any successor rating established by the movie production industry) or is otherwise of a pornographic or obscene nature; or (ii) sexually explicit games, toys, devices, or similar merchandise.

3. Prohibited Conditions. The following shall be prohibited within the Properties:

(a) Plants, animals, devices or other things of any sort whose activities or existence in any way is noxious, dangerous, unsightly, unpleasant, or of a nature as may diminish or destroy the enjoyment of the Properties by persons occupying or visiting other Units;

(b) Structures, equipment or other items on the exterior portions of a Unit which have become rusty, dilapidated or otherwise fallen into disrepair; and

(c) Sprinkler or irrigation systems or wells of any type which draw upon water from ground or surface waters within Blakeney, except that Declarant and the Association shall have the right to draw water from such sources;

(d) Satellite dishes, antennae and similar devices for the transmission of television, radio, satellite, or other signals of any kind, except that (i) Declarant and the Association shall have the right, without obligation, to erect or install and maintain any such apparatus for the benefit of all or a portion of the Properties, and (ii) antennae or satellite dishes designed to receive direct broadcast satellite service which are one meter or less in diameter, antennae or satellite dishes designed to receive video programming services via multi-point distribution services which are one meter or less in diameter or diagonal measurement, or antennae or satellite dishes designed to receive television broadcast signals (collectively, "Permitted Devices") shall be permitted, *provided that* any such Permitted Device is placed in the least conspicuous location on the Unit in which an acceptable quality signal can be received and is screened from the view of adjacent Units, streets and Common Areas in a manner consistent with the Community-Wide Standard and the Architectural Guidelines.

4. Leasing of Units. "Leasing," for purposes of this Paragraph, is defined as regular, exclusive occupancy of a Unit by any person, other than the Owner for which the Owner receives any consideration or benefit, including, but not limited to, a fee, service, gratuity, or emolument. All leases shall be in writing and shall have an initial term of at least six months. An Owner who leases its Unit shall give notice of the lease, together with such additional information as the Board may require, to the Board within 10 days of execution of the lease. The Owner must make available to the lessee copies of the Declaration, By-Laws, and the Restrictions and Rules.

EXHIBIT "D"

Formula For Determining Liability for Assessments and Voting Rights

Except as otherwise specifically provided in the Declaration, assessment obligations and voting rights for Units shall be based upon the acreage of land comprising a particular Unit relative to the total acreage of land comprising all other Units subject to a particular assessment or entitled to vote on a particular matter, as described below. Each Unit within any condominium located in the Properties shall be deemed to contain the area of land determined by multiplying such Unit's percentage interest in the common elements of such condominium by the total square footage of land comprising the condominium. In the case of Units subject to the jurisdiction of an Additional Association which holds title to common property for the benefit of such Units, each such Unit shall be deemed to include, in addition to the land within the boundaries of the Unit, its pro rata share of the common property of such Additional Association, based upon the percentage of liability for common expenses of such Additional Association attributable to the Unit.

The Base Assessment and any Special Assessment for Common Expenses shall be determined for each Unit by multiplying the total amount to be assessed by a fraction, the numerator of which is the acreage of land comprising the particular Unit (rounded to the nearest 100th of an acre) and the denominator of which is the total acreage (so rounded) of all Units subject to such assessment.

The votes attributable to each Unit shall be determined by dividing the acreage of the particular Unit (rounded to the nearest 100th of an acre) by the total acreage (so rounded) of all Units entitled to vote on a particular matter and multiplying the result by 100.

The Board shall annually compute the assessment liability and voting rights for all Units as of a date that is not less than 60 days prior to the beginning of each fiscal year.

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

BY-LAWS
OF
BLAKENEY PROFESSIONAL CENTER ASSOCIATION, INC.

TABLE OF CONTENTS

	<u>PAGE</u>
Article I Name, Principal Office, and Definitions	1
1.1. Name	1
1.2. Principal Office	1
1.3. Definitions	1
Article II Membership: Meetings, Quorum, Voting, Proxies	1
2.1. Membership	1
2.2. Place of Meetings	1
2.3. Annual Meetings	2
2.4. Special Meetings	2
2.5. Notice of Meetings	2
2.6. Waiver of Notice	2
2.7. Adjournment of Meetings	2
2.8. Voting	3
2.9. Proxies	3
2.10. Quorum	3
2.11. Conduct of Meetings	3
2.12. Action Without a Meeting	4
Article III Board of Directors: Selection, Meetings, Powers	4
A. Composition and Selection	4
3.1. Governing Body; Qualifications	4
3.2. Number of Directors	4
3.3. Selection of Directors; Term of Office	4
3.4. Nomination and Election Procedures	5
3.5. Removal of Directors and Vacancies	6
B. Meetings	6
3.6. Organizational Meetings	6
3.7. Regular Meetings	7
3.8. Special Meetings	7
3.9. Notice; Waiver of Notice	7
3.10. Telephonic Participation in Meetings	7
3.11. Quorum of Board	7
3.12. Conduct of Meetings	8
3.13. Open Meetings; Executive Session	8
3.14. Action Without a Formal Meeting	8

EXHIBIT "E"

By-Laws of Blakeney Professional Center Association, Inc.

C. Powers and Duties.	8
3.15. Powers.....	8
3.16. Duties.....	9
Article IV Officers	10
4.1. Officers.....	10
4.2. Election and Term of Office.....	10
4.3. Resignation, Removal and Filling of Vacancies.....	10
4.4. Powers and Duties.....	10
Article V Committees	11
5.1. General.....	11
5.2. Covenants Committee.....	11
Article VI Standards of Conduct; Liability and Indemnification	11
6.1. Standards for Directors and Officers.....	11
6.2. Liability.....	11
6.3. Indemnification.....	12
6.4. Advancement of Expenses.....	13
Article VII Management and Accounting	13
7.1. Compensation of Directors and Officers.....	13
7.2. Right of Class "B" Member to Disapprove Actions.....	13
7.3. Managing Agent.....	14
7.4. Accounts and Reports.....	14
7.5. Borrowing.....	15
7.6. Right To Contract.....	15
7.7. Agreements, Contracts, Deeds, Leases, Checks, Etc.....	16
Article VIII Enforcement Procedures	16
8.1. Notice.....	16
8.2. Hearing.....	16
8.3. Appeal.....	17
Article IX Miscellaneous	17
9.1. Fiscal Year.....	17
9.2. Parliamentary Rules.....	17
9.3. Conflicts.....	17
9.4. Books and Records.....	17
9.5. Notices.....	18
9.6. Amendment.....	18

BY-LAWS
OF
BLAKENEY PROFESSIONAL CENTER ASSOCIATION, INC.

Article I Name, Principal Office, and Definitions

1.1. Name.

The name of the corporation is Blakeney Professional Center 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 the state of 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 Protective Covenants for Blakeney Professional Center, recorded in the Office of the Register of Deeds for 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 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 fourth 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 or their proxies 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 or its duly authorized representative or proxy shall be deemed waiver by such Member of notice of the time, date, and place thereof, unless such Member (or its representative or proxy) specifically objects to lack of proper notice at the time the meeting is called to order. Attendance at a special meeting also shall be deemed waiver of notice of all business transacted at such meeting unless an objection on the basis of lack of proper notice is raised before the business is put to a vote.

2.7. Adjournment of Meetings.

If any meeting of the Members cannot be held because a quorum is not present, a majority of the Members who are present or represented by proxy 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 represented 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 or their proxies entitled to cast at least 20% of the total Class "A" votes in the Association and the presence of a duly authorized representative of the Class "B" Member, if such membership exists, shall constitute a quorum at all meetings of the Association membership.

2.11. Conduct of Meetings.

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

2.12. Action Without a Meeting.

Any action required or permitted by law to be taken at a meeting of the Members may be taken without a meeting, without prior notice and without a vote, if written consent specifically authorizing the proposed action is signed by all Members entitled to vote 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 Members or, in the case of a Member which is not a natural person, an officer, director, trustee, individual partner, or other duly authorized representative of the Member whom the Member has designated in writing to the Secretary of the Association.

3.2. Number of Directors.

The Board shall consist of three to five 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. Except as otherwise provided in this Section 3.3(b), 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. During such period, the Class "A" Members shall be entitled to elect a minority of the total number of directors according to the following schedule:

(i) Within 30 days after the time that Class "A" Members, other than Declarant or Developers, own 5 acres of land within the Properties, or whenever the Class "B" Member earlier determines, the Board shall be increased 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 remaining four directors shall be appointees of the Class "B" Member. The director elected by the Class "A" Members shall not be subject to removal by the Class "B" Member and shall be elected for a term of two years or until the happening of the event described in subsection (b)(ii) below, whichever is shorter. If such director's term expires prior to the happening of the event described in subsection (b)(ii), a successor shall be elected for a like term.

(ii) Within 30 days after the time that Class "A" Members, other than Declarant or Developers, own 10 acres of land within the Properties, 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 remaining three directors shall be appointees of the Class "B" Member. Directors elected by the Class "A" Members shall not be subject to removal by the Class "B" Member and shall be elected for a term of two years or until the happening of the event described in subsection (c)(i) below, whichever is shorter. If such directors' terms expire prior to the happening of the event described in subsection (c)(i) below, successors shall be elected for a like term.

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

(i) Not later than the first annual meeting after the termination of the Class "B" Control Period, the President shall call for an election by which the Class "A" Members shall be entitled to elect four of the five directors. Two directors shall serve a term of two years and two directors shall serve a term of one year, as such directors determine among themselves.

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

(iii) Upon expiration of the term of office of each director elected by the Class "A" Members pursuant to this subsection (c), Class "A" Members shall be entitled to elect a successor to serve a term of two years. Directors elected by the 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 directors by the 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 three or more Class "A" Members or representatives of Class "A" Members. The Nominating Committee shall serve a term of one year or until their successors are appointed. The names of the members of the Nominating Committee shall be announced in the notice of each election.

In preparation for each election, the Nominating Committee shall meet and make as many nominations for election to the Board as it shall in its discretion determine, but in no event less than the number of positions to be filled by the Class "A" Members at such election. Nominations shall also be permitted from the floor at the meeting at which any election is held. 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 Member may cast all votes assigned to the Units which it represents for each position to be filled from any slate of candidates on which such Member is entitled to vote. Cumulative voting shall be permitted. That number of candidates equal to the number of positions to be filled who receives the greatest number of votes shall be elected.

In the event of a tie vote, the Members entitled to vote shall be informed of the tie vote and given the opportunity to discuss the candidates among themselves in an effort to resolve the tie before another vote is taken. If the second vote again results in a tie, then the candidates with equal numbers of votes shall flip a coin to determine who shall serve on the Board.

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 in the Association. 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 the Class "A" members, the Board may declare a vacancy and appoint a successor to fill the vacancy until the next annual meeting, at which time the Class "A" Members 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 following each annual meeting of the membership shall be held within 10 days thereafter at such time and place as the Board shall fix.

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 which 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 which 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 and their duly authorized representatives, 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. 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 Association's expenses;
- (b) levying and collecting assessments from the Owners to fund such expenses and the obligation of the Owners to pay general and special assessments to the Blakeney Association;
- (c) providing for the operation, care, upkeep, and maintenance of the Area of Common Responsibility consistent with the Community-Wide Standard;
- (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;
- (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;
- (f) making and amending Restrictions and Rules in accordance with the Declaration;
- (g) opening bank accounts on behalf of the Association and designating the signatories required;
- (h) making or contracting for the making of repairs, additions, and improvements to or alterations of the Common Area in accordance with the Declaration and these By-Laws;
- (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; provided, the Association's obligation in this regard shall be conditioned in the manner provided in the Declaration;
- (j) obtaining and carrying property and liability insurance and fidelity bonds, as provided in the Declaration, paying the cost thereof, and filing and adjusting claims, as appropriate;
- (k) paying the cost of all services rendered to the Association;
- (l) keeping books with detailed accounts of the Association's receipts and expenditures;
- (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;

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

(o) indemnifying a director, officer or committee member, or former director, officer or committee member of the Association to the extent such indemnity is required by North Carolina law, the Articles and these By-Laws; and

(p) assisting in the resolution of disputes between owners and others without litigation, as set forth in the Declaration.

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. Any two or more offices may be held by the same person, except the offices of President and Secretary.

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

5.1. General.

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

5.2. Covenants Committee.

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

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;

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

(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.

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 Members or their proxies entitled to cast a majority of the total Class "A" votes in the Association at a regular or special meeting of the Association. 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 Developers under the Declaration or these By-Laws, or interfere with development or construction of any portion of the Properties, 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.

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 which 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;

(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;

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

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

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

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

(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..

7.5. Borrowing.

The Association shall have the power to borrow money for any legal purpose; provided, the Board shall obtain Member approval in the same manner provided 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.

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, and other

owners 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.

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 or the Covenants Committee, if one has been appointed pursuant to Article V; and (d) a statement that the proposed sanction shall be imposed as contained in the notice unless a challenge is begun within 10 days of the notice.

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 or Covenants Committee, as applicable. 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 Covenants Committee, or if one has not been appointed, then 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 or Covenants Committee, as applicable, shall contain a written statement of the results of the hearing (i.e., the decision of the Board or Committee) 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; provided the Board or Covenants Committee 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.

8.3. Appeal.

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

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 Mecklenburg County 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;
- (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" Control Period, the Class "B" Member may unilaterally amend these By-Laws for any reason. Thereafter, the Class "B" Member may unilaterally amend these By-Laws at any time and from time to time if such amendment is necessary (i) to bring any provision into compliance with any applicable

governmental statute, rule or regulation, or judicial determination; (ii) to enable any reputable title insurance company to issue title insurance coverage on the Units; or (iii) to satisfy the requirements of any local, state or federal governmental agency.

(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 or their proxies entitled to cast a majority of the total Class "A" votes in the Association, and the consent of the Class "B" Member, if such exists. Notwithstanding the above, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause.

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

(c) Validity and Effective Date of Amendments. 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.

511216/CADocs/ByL-BlakeneyProf Ctr/070103/jps



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

Filed For Registration: 08/14/2003 03:24 PM
Book: RE 15919 Page: 646-723
Document No.: 2003188623
COVNT 78 PGS \$242.00
Recorder: MARILYN SMITH

State of North Carolina, County of Mecklenburg

The foregoing certificate of RHONDA R BISHOP Notary is certified to be correct. This 14TH of August 2003

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

Valerie F. White



2003188623