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SEE BOOK 5270 PAGE 52

FILED Deborah B. Brooks
Register of Deeds, Orange Co., NC
Recording Fee: \$314.00
NC Real Estate TX: \$.00

**DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS**

FOR

BALLENTINE

**THIS DOCUMENT REGULATES OR PROHIBITS THE DISPLAY OF THE FLAG OF
THE UNITED STATES OF AMERICA OR THE STATE OF NORTH CAROLINA.**

**THIS DOCUMENT REGULATES OR PROHIBITS THE DISPLAY OF POLITICAL
SIGNS.**

Parcel Identification Numbers: See Exhibit A-1

Drawn by and upon recording, please return to:

Michael F. King, Esq.
K&L Gates LLP
P.O. Box 17047, Raleigh, North Carolina 27619-7047



**DECLARATION OF COVENANTS
CONDITIONS AND RESTRICTIONS
FOR
BALLENTINE**

This Declaration is made as of date of its recordation in the office of the Register of Deeds for Orange County, North Carolina, by **M/I HOMES OF RALEIGH, LLC**, a Delaware limited liability company ("Declarant") with reference to the following facts:

WITNESSETH:

WHEREAS, Declarant is the owner of certain real property commonly known as the Ballentine subdivision, which real property, together with such portions of the Additional Land (as hereinafter defined), if any, as Declarant may elect to add to such property by filing of a Map thereof and supplemental filing pursuant to Article 15 hereof, shall be hereinafter referred to as Ballentine located in Orange County, North Carolina and more particularly described in Article 2 below ("Property"). Declarant intends to improve Ballentine as a planned residential development by dividing such real property into Lots appropriate for single-family dwellings, both detached and attached, and Common Area for the common use and enjoyment of the Owners of the detached and attached Lots; and

WHEREAS, Declarant owns or may hereafter own real property in Orange County, North Carolina located adjacent to the property hereinabove described (which, if applicable to this Declaration, is more particularly described on Exhibit B attached hereto and made a part hereof and referred to herein as the "Additional Land"). Declarant may, in its sole discretion and without obligation, by one or more supplemental filings pursuant to Article 15 hereof, make all or any portion of the Additional Land, if any, subject to this Declaration and a part of Ballentine; and

WHEREAS, Declarant intends to develop Ballentine under a common scheme and general plan for its improvement and maintenance; and

WHEREAS, for this purpose Declarant intends to (and with respect to the Additional Land, if any, reserves the right to), subject the Property as described in Article 2 below, and so much of the Additional Land, if any, as shall, from time to time, be annexed in accordance with the provisions of this Declaration, to the covenants, conditions, restrictions, easements, liens, charges, assessments and equitable servitudes set forth in this Declaration, for the benefit of Ballentine and the future owners of Lots therein; and

WHEREAS, Declarant deems it desirable for the management and administration of the planned development and for the preservation of the values and amenities of the planned development to incorporate Ballentine Owners Association, Inc. as a nonprofit corporation under the laws of the State of North Carolina for the purposes of administering the limitations, covenants, conditions, restrictions, easements, liens and equitable servitudes created by or imposed in accordance with the provisions hereof, collecting and disbursing the assessments and charges imposed in accordance with the provisions hereof, and exercising such other powers as may be authorized by this Declaration, by law, or by its Articles of Incorporation and Bylaws; and

WHEREAS, this Declaration creates a planned community under the North Carolina Planned Community Act (N. C. Gen. Stat. Chap. 47F).

NOW, THEREFORE, subject to the rights of Declarant established herein, Declarant hereby declares that the Property and every Lot and Common Area (as hereinafter defined) which is a part of the



Property shall be held, occupied, improved, used, mortgaged, transferred, sold, leased, rented, and conveyed subject to the following easements, liens, charges, assessments, equitable servitudes, restrictions, covenants and conditions, which are for the purpose of protecting the value, use, enjoyment and desirability of the Property, and which shall run with such real property and shall be binding on all parties having any right, title or interest in the Property or any part thereof, their heirs, successors and assigns, and shall inure to the use, benefit and enjoyment of each Owner (as hereinafter defined).

ARTICLE 1 DEFINITIONS

The following terms shall have the following meanings when used in this Declaration:

Act. "Act" means and refers to the North Carolina Planned Community Act, Chapter 47F, North Carolina General Statutes as same may be amended from time to time.

Additional Land. "Additional Land" means the real property described on Exhibit B, if any shall be attached hereto, all or any portion of which may from time to time be made subject to this Declaration pursuant to the provisions of Article 15 hereof and which, when so subjected, shall become a part of the Property.

Annual Assessment. "Annual Assessments" or "annual assessments" shall refer to assessments levied on all Lots subject to assessment under Article 9 to fund Common Expenses for the general benefit of all Lots, as more particularly described in Article 9.

Approved Builder. "Approved Builder" shall mean and refer to one or more Persons in the business of building and selling homes to individuals and selected by Declarant to purchase Lots and construct homes for sale in the Property, so long as any such Approved Builder is in good standing with Declarant.

Architectural Control Committee. "Architectural Control Committee" or "ACC" shall mean the committee of the Association created pursuant to Article 13 with authorization over new construction, modifications and alterations in the Property.

Articles. "Articles" means the Articles of Incorporation of the Association, including any amendments thereto.

Association. "Association" means Ballentine Owners Association, Inc., a North Carolina nonprofit corporation, its successors and assigns.

Board. "Board" means the Board of Directors of the Association.

Bylaws. "Bylaws" means the Bylaws of the Association, including any amendments thereto.

Common Area. "Common Area" or "Common Areas" means all real property owned by or held in trust for the benefit of the Association for the common use and enjoyment of its Members, or owned by Declarant and designated for the common use and enjoyment of the Association and its Members, and all improvements and facilities constructed thereon for such purposes, including, but not limited, to (without any obligation by implication of Declarant to construct or install same) any signage, irrigation and/or drainage or detention facilities, pond, dam, dock, pump station and related facilities, fountain, water feature, wells, pumps and related facilities, landscaping, retaining walls, bridges, lighting, swimming pool, wading pool, green or natural area, walking paths or trails, picnic area, putting green, club house,



roadway, driveway, parking area, sports complex, ballfield, playground, tot lot, gazebo, private streets and curb and guttering related to same, streetlights, or other amenity, if any, constructed on portions of the Property designated "Common Open Space", "Common Area", "Private Open Space", "Recreation Area", "Amenity Area" or other similar designation on Map(s) of the Property recorded in the Office of the Register of Deeds for the County and any Town code required shared facility or open space not conveyed to the Town. "Common Area" or "Common Areas" shall also include (i) all private streets and private utilities, if any, including any utility line serving more than one lot located outside of public street rights-of-way and public utility easements, (ii) all retaining walls constructed by Declarant, (iii) any public road, right-of-way or cul-de-sac in the Property which has been dedicated to the public on Map(s) of the Property recorded in the County but not accepted for public maintenance by the appropriate governmental entity, (iv) storm pipes and any median or planting area and related signage, irrigation facilities and lighting constructed by Declarant within rights-of-way within the Property, (v) any real or personal property which the Association now or hereafter owns, leases or holds possessory or use rights in for the benefit of the Owners and their permittees, and (vi) such easement rights for right-of-way and appurtenant easements or licenses as Declarant may declare, acquire or reserve or as are granted to the Association for the benefit of the Owners and their permittees or for the use, care or maintenance of any portion of the Property, including, but not limited to, rights-of-way and appurtenant easements or licenses for landscaping, trees, plantings, irrigation, signage, monuments, lighting, water, sanitary sewer, storm sewer, stormwater drainage and/or retention, communications and/or other utility services. Declarant hereby grants to the Association an easement over any road, right-of-way or cul-de-sac within the Property which shall automatically terminate upon dedication to and acceptance for public maintenance by the appropriate governmental entity.

Common Expenses. "Common Expenses" shall mean the actual and estimated expenses incurred or anticipated to be incurred by the Association, including any reasonable reserve, all as may be found to be necessary and appropriate by the Board pursuant to this Declaration, the Bylaws, and the Articles of Incorporation of the Association, but shall not include any expenses for initial development, original construction, installation of infrastructure, original capital improvements, or other original construction costs for improvements constructed by Declarant unless approved by a majority of the Voting Power of the Association; provided, however, the repair, maintenance and replacement of such infrastructure or other original capital improvements shall be a Common Expense and lease payments on all leased Street Lights within the Property shall be a Common Expense. Common Expenses shall include (i) all sums lawfully assessed by the Association against its Members; (ii) the actual and estimated expenses incurred or anticipated to be incurred by the Association for administration, maintenance, repair, or replacement of the Common Area; (iii) the actual and estimated expenses incurred or anticipated to be incurred by the Association declared to be Common Expenses by the provisions of the Act, this Declaration, the Bylaws, or the Articles of Incorporation of the Association; (iv) premiums for hazard, liability, casualty and such other insurance as the Declaration or the Bylaws may require or authorize the Association to purchase or which the Association is required by law to purchase; (v) ad valorem taxes and assessment charges lawfully levied against the Common Area owned in fee simple by the Association; (vi) the actual and estimated expenses incurred or anticipated to be incurred by the Association as agreed by the Members to be Common Expenses of the Association; (vii) fees for utilities used in connection with the Common Area; (viii) fees for services of accountants, attorneys, engineers, managers and other professionals engaged by the Association; (ix) payment to the Town under the Stormwater Agreement; (x) the costs and expenses associated with encroachments within the rights-of-way serving the Property in accordance with any encroachment agreement(s) by and among the Declarant, the Association and the Town; (xi) the costs and expenses associated the maintenance, preservation, enhancement, repair and improvement of the exterior of the dwellings and Lot improvements which the Association is required to maintain under Article 6, which shall be funded by the Townhome lot maintenance assessments as described in Article 9; (xii) unpaid assessments following a foreclosure; and (xiii) lease payments on all leased street lights



within the Property; and (xiv) expenses incurred for trash removal providers engaged by the Association to serve the Property.

Completion of Sales. "Completion of Sales" means the earlier of (a) the conveyance of all Lots in the Property to purchasers other than a builder or a successor Declarant hereunder, or (b) at such time as Declarant records a Notice of Termination of Sales in the public records of the County.

County. "County" means Orange County in the State of North Carolina.

CPI. "CPI" means The Consumer Price Index For All Urban Consumers ("CPI-U"), U.S. City Average (All Items) published by the United States Bureau of Labor Statistics.

Declarant. "Declarant" means M/I Homes of Raleigh, LLC, a Delaware limited liability company, and any successor or assign to whom Declarant assigns its interest as Declarant hereunder in whole or in part by instrument recorded in the official records of the County.

Declaration. "Declaration" means this Declaration and all amendments or supplements hereto.

Exempt Property. "Exempt Property" is defined in Section 9.15.

Insurance Trustee. "Insurance Trustee" means a national banking association or title company licensed to do business in North Carolina as may be designated by the Association to hold and disburse funds as trustee for the Association and the Owners, as provided in this Declaration.

Legal Requirement. "Legal Requirement" is defined as and includes any duly adopted and applicable law, ordinance, regulation or requirement of the United States of America, the State of North Carolina, Town, the County, or any other governmental entity or quasi-governmental entity or agency having jurisdiction over the Property or any portion thereof, including any branch, department or division of any of the foregoing governmental and quasi-governmental entities.

Lot. "Lot" means any numbered lot or plot of land, together with any improvements thereon, which is shown upon any Map covering the Property, or a part thereof, which is not dedicated right-of-way or Common Area (provided, certain Common Area easements may encroach upon a Lot).

Map. "Map" means a recorded boundary, recombination or subdivision plat of all or a portion of the Property recorded in the Orange County Public Registry.

Member. "Member" means a member of the Association.

Mortgage. "Mortgage" means a mortgage or deed of trust which constitutes a first lien upon a Lot given to a bank, savings and loan association or other institutional lender for the purpose of securing indebtedness incurred to purchase or improve a Lot.

Mortgagee. "Mortgagee" means the holder of the beneficial interest in any Mortgage.

Notice and Opportunity for Hearing. "Notice and Opportunity for Hearing" means giving at least fifteen (15) days' prior notice of a proposed action and the reasons therefor, and an opportunity to be heard by the Board, orally or in writing, not less than five (5) days before the effective date of the proposed action.



Owner. "Owner" means the record owner, whether one or more persons or entities, of fee simple title to any Lot, and shall include Declarant as to any Lot owned by Declarant. "Owner" shall not include any person or entity who holds an interest in a Lot merely as security for the performance of an obligation or as a tenant.

Person. "Person" means an individual, corporation, partnership, limited liability company, trustee or other legal entity capable of holding title to real property.

Phase. "Phase" means the real estate shown on each Map of the Property, including the portion of Ballentine described in Article 2 below, as recorded in the Orange County Public Registry.

Property. "Property" means the portion of Ballentine described in Article 2 below and, when and if subjected to the terms and provisions of this Declaration by Declarant acting in its sole discretion, all or any portion of the Additional Land, if any, and any other real property subjected to this Declaration by Supplemental Declaration recorded pursuant to Article 15 hereof.

Registry. "Registry" shall mean and refer to the Office of the Register of Deeds of Orange County, North Carolina.

Rules and Regulations. "Rules and Regulations" means reasonable and nondiscriminatory rules and regulations as may be adopted from time to time by the Association, provided notice of such rules and regulations has been given to Owners in accordance with the requirements of this Declaration.

Single Family Lot. "Single Family Lot" means any Lot within the Property which is not a Townhome Lot and depicted on Map(s) of the Property recorded in the public registry of the County.

Single Family Lot Owner. "Single Family Lot Owner" means the Owner of a Single Family Lot.

Special Assessment. "Special Assessment" or "special assessment" shall mean and refer to assessments levied in accordance with Article 9, Sections 9.06 and 9.07 of this Declaration.

Special Declarant Rights. "Special Declarant Rights" means, without limitation, the rights as defined in Section 47F-1-103(28) of the Act for the benefit of Declarant and its appointees which are hereby reserved in favor of Declarant, including, but not limited to the following: the right to complete, repair, maintain, replace and operate improvements indicated on Maps of the Property, including, without limitation, utility infrastructure, dwellings and Common Area improvements; the right to exercise any development right; the right to maintain sales offices, manage offices, models and signs advertising the Property; the right to use easements through the Common Area and through any Lot or Lots for the purpose of making, improvements within the Property and repairing, maintaining, replacing and operating improvements within the Property, provided that following the exercise of such rights the Property will be restored, and the right to elect, appoint or remove any officer or Board member of the Association during the period of Declarant control described in Section 8.06.

Stormwater Facility. "Stormwater Facility" or "Stormwater Facilities" is defined as any one or more of the following that serves or benefits any part or all of the Property or is required by Legal Requirements in connection with any part or all of the Property, whether located in the Property or outside of the Property: (i) "drainage easements" (also referred to herein as "stormwater easements" or "stormwater drainage easements") that are shown on plats of the Property recorded in the Registry or established by written instruments recorded in the Registry, and which either are located on the Common Area or benefit or serve more than one (1) Lot; and (ii) all stormwater management facilities for the Property including ponds, man-made or natural areas and/or planted or landscaped areas into which



stormwater drains, or in which stormwater is collected, or from which it is discharged, drains, pipes, conduits, inlets, swales, creeks, streams, channels, dams, ditches, filters, buffers, bio-retention areas, level spreaders, constructed wetlands, and other equipment, facilities and stormwater management measures used for inspecting, monitoring, measuring, testing, collecting, controlling, transporting, conveying, handling, storing, discharging and/or managing stormwater. Except as otherwise provided herein, Stormwater Facilities are part of the Common Area, and maintenance of Stormwater Facilities is a Common Expense. References in the Declaration to stormwater management include all applicable Stormwater Facilities, Stormwater Agreements and Stormwater Maintenance Manuals.

Stormwater Facility Agreements. "Stormwater Facility Agreements" (which term includes any other agreement under Legal Requirements, by whatever name denominated therein, relating to Stormwater Facilities) is defined as any agreement required by any Legal Requirement between the Town and the Declarant or between the Town and the Association, or among the Town, Declarant and Association, or between or among any combination of the Town and the Declarant, the Association and one or more Owners, relating to maintenance of Stormwater Facilities.

Stormwater Maintenance Manual. "Stormwater Maintenance Manual" (which term includes any other instrument or document under Legal Requirements, by whatever name denominated therein, addressing the same or similar matters) is defined as the specific requirements for maintenance of Stormwater Facilities as required by the Town.

Supplemental Declaration. "Supplemental Declaration" means a supplemental declaration of covenants, conditions and restrictions which shall be recorded for the purposes of annexing additional property, including all or any portion of the Additional Land, if any, to the Property and causing such property to be subject to the scheme of covenants, conditions and restrictions contained in this Declaration, and any additional covenants, conditions and restrictions contained in the supplemental declaration of covenants, conditions and restrictions.

Town. "Town" means the Town of Carrboro, Orange County in the State of North Carolina.

Town Code. "Town Code" means the Code of Ordinances of Carrboro.

Townhome Lot. "Townhome Lot" means any attached Lot within the portion of the Property designated for townhome development on Map(s) of the Property recorded in the public registry of the County.

Townhome Lot Owner. "Townhome Lot Owner" means the Owner of a Townhome Lot.

Townhome Property. "Townhome Property" means the portion(s) of the Property designated for townhome development on Map(s) of the Property recorded in the public registry of the County.

Voting Power. "Voting Power" means the total number of votes allocated to Members whose membership at the time the determination of Voting Power is made has not been suspended in accordance with the provisions of this Declaration or the Rules and Regulations. Voting Power shall be computed by including all such Members whether or not such Members are present in person or by proxy at a meeting. All voting specifications and requirements shall apply to the entire Property.



ARTICLE 2

PROPERTY, SUBMISSION AND TERM

2.01. Property. The property subject to this Declaration and within the jurisdiction of the Association is located in Orange County, North Carolina, and is described more particularly on Exhibit A attached hereto and incorporated herein by reference. And when and if subjected to the terms and provisions of this Declaration by Declarant acting in its sole discretion, all or any portion of the Additional Land, if any, and any other real property subjected to this Declaration by Supplemental Declaration recorded pursuant to Article 15 hereof.

2.02. Submission. The Property shall be held, conveyed, hypothecated, encumbered, sold, transferred, leased, rented, used, occupied and improved subject to each and all of the limitations, covenants, conditions, restrictions, easements, liens, charges, assessments and equitable servitudes set forth herein, all of which are declared to be (a) in furtherance of a common scheme and general plan for the development, improvement and maintenance of the Property and (b) for the purpose of enhancing, maintaining and protecting the value, desirability and attractiveness of the Property. All of the limitations, covenants, conditions, restrictions, easements, liens, charges, assessments and equitable servitudes set forth herein shall run with, be binding upon and inure to the benefit of the Property, shall be binding on and inure to the benefit of each and every person having or acquiring any right, title or interest in the Property, shall be binding upon and inure to the benefit of the successors in interest of such persons, and shall inure to the benefit of the Association, its successors and assigns.

2.03. Incorporation of Declaration Into Instruments. Any deed or other instrument by which a Lot is conveyed shall be subject to the provisions of this Declaration and shall be deemed to incorporate the provisions of this Declaration, as amended from time to time, whether or not the deed makes reference hereto.

2.04. Term. This Declaration shall remain in force until terminated by the affirmative vote of ninety percent (90%) of the Voting Power of the Association.

ARTICLE 3

COMPLIANCE WITH MANAGEMENT DOCUMENTS

3.01. Compliance with Declaration and Other Documents. Each Owner, resident, tenant or guest of a Lot shall comply with the provisions of this Declaration, the Bylaws, Rules and Regulations duly adopted by the Association, decisions and resolutions of the Association and its duly authorized representatives, all as may be amended from time to time, and failure to comply with any such provisions, decisions or resolutions, shall be grounds for an action to recover sums due for damages or for injunctive relief.

3.02. Resolution of Conflicts Between Documents. Each Owner covenants and agrees that the administration of the Property shall be in accordance with the provisions of this Declaration, the Articles, the Bylaws and Rules and Regulations duly adopted by the Association. If there are any matters of conflict or inconsistencies in the Bylaws, Articles and this Declaration, then the provisions of this Declaration shall prevail. In the event that anything shown on a Map for all or any portion of the Property is in any way inconsistent with provisions of this Declaration, then the provisions of this Declaration shall prevail unless otherwise required by law. If a dispute arises among Owners in regard to the administration of the Property, then the provisions of this Declaration shall prevail.



**ARTICLE 4
PROPERTY RIGHTS**

4.01. Title to the Common Area. The Declarant hereby covenants for itself, its successors and assigns, that it will convey fee simple title to the Common Area depicted on the Maps of the Property to the Association in accordance with applicable Legal Requirements (to the extent such Common Areas can be conveyed in fee simple, free and clear of all encumbrances and liens, except those set forth in this Declaration and utility, greenway and storm drainage easements and other matters of public record in the Registry. In the event a conveyance of the Common Area in fee simple would result in an illegal subdivision, then such Common Area as shown on a Map shall be deemed dedicated to the Association for the benefit of the Association and for the common use and enjoyment of its Members. Following conveyance of Common Area to the Association in fee simple, Declarant shall be entitled to a proration credit for all expenses of the Association incurred by Declarant (including insurance and real estate taxes) which have not theretofore been reimbursed to Declarant. The Common Area shall be conveyed without any express or implied warranties, which warranties are hereby expressly disclaimed by Declarant. Upon such conveyance, maintenance of the Common Area shall be the responsibility of the Association, including, but not limited to, the maintenance of any stormwater facilities that are part of the Common Area. The maintenance of these stormwater facilities, including the expansion of such facilities as required by the Town or otherwise, shall be performed to the standard required by the Town or other applicable governing body. Title to the Common Areas, including, without limitation, all private streets, if any, shall be for the perpetual benefit of the Members, and private or public ownership for any purpose other than for the benefit of the Members is prohibited.

4.02. Common Area Easements. Each Owner shall have a non-exclusive perpetual right and easement of use and enjoyment in and to the Common Area and of access to and from such Owner's Lot over any streets, parking areas and walkways comprising a portion of the Common Area, which rights and easements shall be appurtenant to and shall pass with the title to such Owner's Lot and subject to the following rights and restrictions:

(a) The right of the Association, after Notice and Opportunity for Hearing, to limit the number of guests of an Owner, to charge reasonable fees with respect to the use of Common Area facilities, if any, and to limit the use of said facilities to Owners who occupy a residence in the Property. Common Area facilities include private streets and no fees, other than assessments, shall be charged for those facilities.

(b) The right of the Association to suspend the right of an Owner or any Person to use any Common Area facilities (except drainage rights and rights of access to Lots) (i) for any period during which any fine against a Member or any assessment against such Owner's Lot remains unpaid; and (ii) after Notice and Opportunity for Hearing, for a period not to exceed thirty (30) days for any infraction of the Rules and Regulations;

(c) The right of the Association, subject to the provisions of the Act (Section 3-112), to encumber or convey all or any part of the Common Area.

(d) The right of the Association to grant easements, leases, licenses and concessions through or over the Common Areas.

(e) The right of the Association, subject to the provisions of the Act (Section 3-112), to borrow money to improve, repair, restore and reconstruct the Common Area and to place liens on the Common Area and otherwise encumber the Common Area for such purposes.



(f) The right of the Association to adopt Rules and Regulations governing use and enjoyment of the Common Area and the Property.

(g) The rights of the Association and of Declarant to the use of easements for ingress and egress over, in, to and throughout the Common Area.

(h) The rights of the Association and Declarant to establish public storm drainage easements, sanitary sewer easements, and any and all other easements over the Common Areas as shown on the Maps.

(i) The right of the Association or its representative to enter any Lot in the case of any emergency threatening such Lot or any other lot for the purpose of remedying or abating the cause of such emergency. Such right of entry shall be immediate.

(j) The right of Declarant, its successors and assigns to make any improvements for any reason they deem proper upon the Common Areas, even after their conveyance to the Association. Declarant hereby reserves an easement over the Common Areas for the purpose of developing the remainder of the adjacent property owned by Declarant. Although not limiting the scope of this easement, this easement shall include the right of access at all times for its employees, agent, subcontractors, invitees, etc., over the Common Areas and shall include the right to construct, maintain and dedicate any additional drainage easements, general utility easements and any additional sanitary sewer or water line easements across any of the Common Areas. This easement shall terminate upon the completion of the development of the adjacent property owned by Declarant or ten (10) years from the date hereof, whichever first occurs. Provided that following construction, the Common Areas shall be restored to their former condition as is practicable and in no event shall any security interest, including without limitation, mechanics and materialmen liens, encumber the Common Areas because of the work authorized herein.

(k) The right of the Association to enter any Townhome Lot in order to perform any maintenance, alteration, or repair required herein to be performed by the Association, and the Owner of such Townhome Lot shall permit the Association or its representative to enter for such purpose at reasonable times and with reasonable advance notice (except with respect to grass and landscaping maintenance which shall be performed, without notice, at reasonable times as determined by the Association).

(l) Each portion of the Common Area designated as "Alley" or by similar designation on any Map of the Property is reserved for the exclusive use of the owners of the Townhome Lots abutting such Alley. All costs of maintenance, operation, repair, and replacement of all such Alleys shall be assessed by the Association against only the Townhome Lot Owners.

4.03. Delegation. Any Owner may delegate his or her rights of use and enjoyment of the Common Area and any facilities thereon to the members of his or her family or household residing on his or her Lot and to his or her guests and invitees while in possession of his or her Lot, subject, however, to reasonable restrictions imposed by the provisions of this Declaration, the Bylaws and the Rules and Regulations. Subject to the provisions of Section 4.02(a) and Section 4.04 of this Declaration, a tenant of an Owner, while residing on such Owner's Lot, shall be entitled to use and enjoy the Common Area and any facilities thereon and to delegate rights of use and enjoyment in the same manner as if such tenant were the Owner of such Lot. No such delegation shall release an Owner from his or her obligations



hereunder, including, without limitation, the obligation to pay Annual Assessments and Special Assessments.

Upon request, each Owner or tenant shall notify the Secretary of the Association of the names of all persons to whom such Owner or tenant has delegated any rights of use and enjoyment of the Common Area and the relationship that each such person bears to such Owner or tenant. Any delegated rights of use and enjoyment are subject to suspension to the same extent as the rights of Owners.

4.04. Tenants.

(a) Any Owner who rents or leases his or her Lot to a tenant shall not be entitled to use and enjoy any common facilities on the Common Area during the period the Lot is occupied by such tenant.

(b) No Owner shall lease or rent less than an entire Lot. Except with respect to construction trailers or model homes which may be used or occupied by Declarant, the Lots shall not be leased or rented for hotel or transient purposes and no rental agreement or lease shall be made for a period of less than six (6) months (unless a lease is executed for a shorter term in connection with the sale of a Lot by an Owner who is to temporarily occupy such Lot following the closing of the sale thereof). Subject to the foregoing restrictions, Owners shall have the right to lease or rent their Lots, provided that any lease or rental agreement between an Owner and a tenant shall be in writing and shall provide that it is in all respects subject to the provisions of this Declaration, the Bylaws, and the Rules and Regulations and that any failure by the tenant to comply with such provisions shall be a default under the rental agreement or lease. However, the failure of any lease or rental agreement to so provide shall not excuse any person from complying with the provisions of this Declaration, the Bylaws, and the Rules and Regulations. All ground leases entered into by and between the Community Home Trust (or any similar affordable housing organization) (the "Land Trust") and a lessee in the form similar to the one attached hereto as Exhibit C are hereby approved. Notwithstanding anything to contrary in this Declaration, due to the ground lease structure with the Land Trust, the tenant under a ground lease with the Land Trust (the "Land Trust Tenant") shall be a Class A Member in the Association rather than the Land Trust as Owner of the Lot, provided, however, the Land Trust may exercise its rights as an Owner to discharge any lien filed against such Lot by the Association for the failure of a Land Trust tenant to pay any required assessments.

(c) In the event an Owner shall rent or lease his or her Lot such Owner shall immediately give to the Association in writing:

- (i) the name of the tenant and the Lot rented or leased;
- (ii) the current address of such Owner;
- (iii) a true and complete copy of the lease or rental agreement; and
- (iv) the certification of the Owner that the tenant has been given a copy of this Declaration, any applicable amendments, the Bylaws and the Rules and Regulations and that such tenant has been advised of any obligations he may have thereunder as a tenant.



(d) In no event shall any lease or rental agreement release or relieve an Owner from the obligation to pay regular and special assessments to the Association, regardless of whether the obligation to pay assessments has been assumed by the tenant in such lease or rental agreement.

(e) With respect to any tenant or any person present on any Lot other than the Owner and the members of the Owner's immediate family permanently residing with the Owner on the Lot, if such Person shall materially violate any provision of the Declaration, the Articles, the Bylaws, or the Rules and Regulations, or shall create a nuisance or an unreasonable and continuous source of annoyance to the Owners or shall willfully destroy Common Area property or personal property of the Association, then upon written notice by the Association such Person shall be required to immediately leave the Property and if such Person does not do so, the Association is authorized to commence an action to evict such Person and, where necessary, to enjoin such Person from returning. The expense of such action including attorneys' fees may be assessed against the applicable Owner and collected as a special assessment pursuant to Section 9.07 hereof. The foregoing is in addition to any other remedy available to the Association. The Association shall provide notice to the Owner of a leased Lot concurrently with any notices sent to the tenant of such Lot, and such Owner shall have the right to participate in any hearing or eviction proceeding. The right of eviction provided for herein shall be included in all leases or rental agreements between an Owner and a tenant, but the omission from a lease or rental agreement of such provision shall not affect the Association's right to evict as permitted herein.

4.05. Reciprocal Easements. There shall be reciprocal appurtenant easements between each Lot and such portion or portions of the Common Area as may be adjacent thereto and between adjacent Lots for the flow of rainwater from gutters and downspouts, including, without limitation, the conveyance of stormwater through pipes and related stormwater facilities constructed by Declarant on the exterior of the units on the Townhome Lots, the repair of fences and similar improvements, lawn maintenance and trash removal (including the transport of sanitary containers for pick up by the applicable disposal service); provided, however, that no such easement shall unreasonably interfere with the use and enjoyment of the Common Area or any adjacent Lot. If any Common Area or Lot improvement encroaches upon a Lot because of the placement, construction, reconstruction, repair, movement, settling or shifting of the improvements constructed by Declarant, or reconstructed or repaired in accordance with the provisions of this Declaration, an easement for the encroachment and for its maintenance shall exist. If any Lot encroaches upon the Common Area as a result of construction, reconstruction, repair, shifting, settlement or movement of any portion of the Property, an easement for the encroachment and for its maintenance shall exist so long as it remains. In addition, Declarant hereby reserves unto itself, its successors and assigns, and hereby grants to the Association and establishes a perpetual alienable easement and right on, over and through the reciprocal easements herein described for the purpose of providing services, at this time known or unknown, to the Lots or Common Area, including any areas of responsibility (e.g. exteriors of the units on the Townhome Lots) that are required by the terms of this Declaration to be completed by Declarant or Association.

4.06. Utility Easements. Any easements for installation, maintenance, use or repair of public utilities or drainage or detention facilities which are dedicated on any Map of the Property, reserved under any deed of any Lot, or created by Declarant in some other way shall be kept free of buildings, and within such easements no structure, fence, planting or other improvement shall be placed or permitted to remain which may damage or interfere with the installation, maintenance, use or repair of such public utilities or drainage or detention facilities, or which may damage, interfere, or change the direction or flow of drainage in the easements. Notwithstanding anything contained herein to the contrary, any such easement dedicated on any Map of the Property, reserved under any deed of any Lot, or created by Declarant in some other way shall be maintained by the Owner(s) of any affected Lot(s) to the extent so encumbered by said easement, including all storm drainage facilities located within any "P. S. D. E." (public storm



drainage easement) or "PDE" or "Private Drainage Easement" shown on the Map, except as otherwise indicated by such Map or unless maintenance has been assumed by the Association or any public utility or governmental entity having jurisdiction thereover. All such easements described in this Section 4.06 at all times shall be accessible to Declarant until the Property is completed and at all times shall be accessible to all Persons installing, repairing, using or maintaining such utilities and drainage facilities.

All utility lines of every type, including but not limited to water, electricity, gas, telephone, sewage and television cables, running from the main trunk line or service location to any Lot must be underground. Until the date that is one (1) year after the Completion of Sales, the Declarant reserves unto itself, its successors and assigns, a perpetual alienable easement and right on, over and under the ground to erect, maintain and use water, irrigation, electric, gas, telephone, sewage and television cables, and any other utilities lines and conduits for the purpose of bringing public or other services, at this time known or unknown, to the Property on, in, under and over the private streets or roads and over any Lot, and over such areas as are so identified on any Map of the Property or shown on any site plan or construction drawings for the Property on file with and approved by the Town. In addition, the Association may cut, in the above described easements, as well as any where else as required, at its own expense, drainways for surface water and/or to install underground storm drainage wherever and whenever such action is required by applicable health, sanitation or other state or local authorities, or in order to maintain reasonable standards of health, safety and appearance. In addition, along streets fronting property lines, Declarant reserves the right to install, maintain and repair pedestrian paths, street lights and/or street-side landscaping, which right shall automatically transfer to the Association upon the Completion of Sales. Any easements first established on property not owned by the Declarant must be consented to by the Owner of such property and evidenced on the Map or in recorded instrument creating the easement.

The Declarant may, but shall not be required to, release any of the easements reserved herein as to any Lot for which it deems such easement is unnecessary for the efficient development and operation of the Property.

4.07. No Subdivision of Lots; No Time-Sharing. Other than that effected by Declarant in preparing and recording Maps, or in revising recorded Maps, there shall be no further subdivision or partition of any Lot nor shall any Owner other than Declarant, or any other person acquiring any interest in a Lot seek any partition or subdivision thereof unless the Association consents to such subdivision or partition as evidenced on a Map. There shall be no time-sharing or other co-ownership which allows multiple Owners sequential possessory interests in a Lot.

4.08. Sale of Common Area. Except as otherwise provided in this Declaration and except as provided in the Act, no sale, transfer, dedication, hypothecation, partition, subdivision, abandonment, release or alienation of the Common Area shall, or may be, effected.

4.09. Townhome Limited Common Area. Certain portions of the Common Area may be designated as "Townhome Limited Common Area" or such similar designation and reserved for the exclusive use or primary benefit of Townhome Lot Owners of designated Townhome Lots and their invitees. By way of illustration and not limitation, Townhome Limited Common Area may include entry features, recreational facilities, landscaped medians and cul-de-sacs, roadways not necessary to provide other Lots with access to public streets, lakes and other portions of the Common Areas designated to benefit particular Townhome Lots. All costs associated with maintenance, repair, replacement, and insurance of a Townhome Limited Common Area shall be an expense allocated to the Townhome Lot Owners to which the Townhome Limited Common Area is assigned, which may be recovered the Townhome lot maintenance assessments. Any Townhome Limited Common Area shall be designated as such and the exclusive use thereof may be assigned in the deed(s) by which the Declarant conveys the Common Area to the Association and shown on a Map designating such Townhome Limited Common



Area; provided, any such assignment shall not be exclusive and shall not preclude the Declarant from later assigning use of the same Townhome Limited Common Area to additional Townhome Lots. The Association may, upon approval of the Townhome Lot Owner(s) of the Townhome Lot(s) to which certain Townhome Limited Common Area is assigned, permit Owners of other Lots and their invitees to use all or a portion of such Townhome Limited Common Area upon payment of reasonable user fees, which fees shall be used to offset the special assessments attributable to such Townhome Limited Common Area.

4.10. Declarant's Right to Change Development Plans. With the approval of the Town, Declarant shall have the right, without consent or approval of the Owners, to create Lots and dwelling units, add Common Area, change unit types and reallocate units within the Property, and release or withdraw real property from the development. In addition, Declarant shall have the right to change Common Area and Lots designations, the boundary lines of Common Area and Lots and the location of easements shown on any Map by recording a new Map showing such changes, which Map shall be executed by the Declarant and the Owner of the Common Area or Lot so modified. To the fullest extent permitted by North Carolina law, each Owner covenants by acceptance of the deed or instrument by which its Lot is conveyed not to protest, challenge or otherwise object to (i) changes in uses or density of the Property or Additional Land, or (ii) modifications to the boundary lines of the Common Area and Lots and/or the location of easements shown on any Maps, or (iii) changes in the site plan and other development documents filed with the Town in connection with the Property or Additional Land.

4.11. Rules and Regulations. The Association shall have the right to adopt, publish and enforce Rules and Regulations governing the Property, the use and enjoyment of the Common Area, and any facilities thereon, and the personal conduct thereon of the Owners or other Persons, their guests, invitees, members of their families or households and tenants. Such Rules and Regulations shall be reasonable, shall not discriminate against Declarant (or have an adverse impact on Declarant or upon the sale of Lots or the construction of improvements thereon), and must be consistent with this Declaration, the Articles and the Bylaws. Rules and Regulations and any changes thereto shall be effective upon Board approval and shall be posted in a conspicuous location within the Property or mailed to each Owner addressed to the Owner's address last appearing in the books of the Association, postage prepaid, within thirty (30) days of Board approval.

4.12. Enforcement. Unless otherwise limited by the terms and provisions of the Act, the Association shall be authorized to impose sanctions for violations of this Declaration, the Bylaws, or the Rules and Regulations. Sanctions may include reasonable monetary fines not to exceed \$100.00 for each day more than five days after decision that the violation occurs and suspension of the right to vote and to use any facilities within the Common Area after Notice and Opportunity for Hearing (excepting drainage rights and rights of access to Lots). In addition, the Association, through the Board, after Notice and Opportunity for Hearing, shall have the right to exercise self-help to cure violations, and shall be entitled to suspend any services provided by the Association to any Owner or Lot in the event that such Owner is more than thirty (30) days delinquent in paying any assessment or other charge due to the Association. The Board shall have the power to seek relief in any court for violations of this Declaration, the Bylaws or the Rules and Regulations or to abate nuisances.

4.13. Party Walls.

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



(b) Sharing of Repair and Maintenance. The cost of replacement, repair and maintenance of a party wall shall be shared equally by the Townhome Lot Owners of the townhomes which share the wall, in proportion to such use.

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

(d) Easement and Right of Entry for Repair, Maintenance, and Reconstruction. Every Townhome Lot Owner shall have an easement and right of entry upon the Lot of any other Townhome Lot Owner to the extent reasonably necessary to perform repair, maintenance, or reconstruction of a party wall and those improvements belonging to his Townhome Lot which encroach on an adjoining Townhome Lot or Common Area. Such repair, maintenance, or reconstruction shall be done expeditiously, and upon completion of the work, the Townhome Lot Owner shall restore the adjoining Townhome Lot or Townhome Lots and Common Area to as near the same condition as that which prevailed prior to commencement of the work as is reasonably practicable.

(e) Weatherproofing. Notwithstanding any other provision of this Section, a Townhome Lot Owner who by his negligent or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

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

(g) Certification by Adjoining Townhome Lot Owner that No Contribution is Due. If any Townhome Lot Owner desires to sell his Townhome Lot, he may, in order to assure a prospective purchaser that no adjoining property Townhome Lot Owner has a right of contribution as provided in this Section 4.13, request from the adjoining Townhome Lot Owner or Townhome Lot Owners a certification that no right of contribution exists, whereupon it shall be the duty of each adjoining Townhome Lot Owner to make such certification immediately upon request and without charge; provided, however, that where the adjoining Townhome Lot Owner claims a right of contribution, the certification shall contain a recital of the amount claimed.

(h) Arbitration. In the event of any dispute arising concerning a party wall or under the provisions of this Section, the same shall be settled by arbitration in the manner provided under the Uniform Arbitration Act of North Carolina, as the same may be amended from time to time.

ARTICLE 5 COMMON AREA EASEMENTS AND RIGHTS OF WAY; ENCUMBRANCES

5.01. Dedications. The Association shall have the power to grant easements in, on, over, through and across the Common Area for any public or quasi-public improvements or facilities and their



appurtenances, including, without limitation, street, sewer, drainage, water, gas and sprinkler improvements and facilities, provided (a) any such easement does not unreasonably interfere with the use and enjoyment of the Common Area or any Lot, and (b) the prior written consent of Declarant shall be obtained so long as Declarant owns any Lot. Each Owner, by accepting a deed to a Lot, expressly grants to the Association an irrevocable power of attorney for the purpose of granting such easements in, on, over, through and across the Common Area. The President or other duly designated officer of the Association may execute, acknowledge and record in the official records of the County a certificate stating that the Board is the attorney in fact for the Owners for the purpose of such grant and that such power of attorney is properly exercisable in accordance with this Declaration. The acts of the Board in exercising its power of attorney shall be conclusively binding on all Owners. The power of attorney herein granted shall include authority to do such acts incidental to such grant and to incur such expenses as may be necessary or convenient in connection therewith. The Board, by resolution, shall instruct the appropriate officers of the Association to make, execute and deliver on behalf of any Owner, as his or her interest may appear, any and all instruments, certificates and documents, including but not limited to, releases, waivers, deeds, escrow instructions and conveyances of every kind and nature, as may be deemed necessary or convenient for such dedication or grant.

5.02. Easements in Private Streets, Private Water Lines and Private Sewer Lines. In its development of the Property, the Declarant may construct certain private streets, private water lines and private sewer lines within the Property. The Owners of those Lots adjacent to such private streets, private water lines and private sewer lines shall have an easement but no more than an easement for ingress and egress for themselves, their tenants, agents, employees, representatives, invitees and assigns over such private streets and an easement to utilize such private water lines and private sewer lines. In no case shall the Town, County or the State of North Carolina be responsible for maintaining any private street, private water line or private sewer line. Such maintenance obligations shall be the responsibility of the Association and Owners acknowledge that private streets will not be constructed to minimum standards sufficient to allow their inclusion for public maintenance. If any private streets, private water lines or private sewer lines encroach upon a Lot because of the placement, construction, reconstruction, repair, movement, settling or shifting of the improvements constructed by Declarant, or reconstructed or repaired in accordance with the provisions of this Declaration, an easement for the encroachment and for its maintenance shall exist. Owners acknowledge that private utility easements may not be shown on Maps of the Property and agree that to the extent a private utility encroaches upon the Lots, such area is defined as Common Area hereunder and the Association shall have the right to place, construct, reconstruct, move, maintain and repair such private utilities. In no case shall the Town be responsible for failing to provide any emergency or regular fire, police, or other public service to the Property and the Owners when such failure is due to lack of access to such areas within the Property due to inadequate design or construction, blocking of access routes, inadequate maintenance or any other factor within the control of the Declarant, Association or Owners.

5.03. Encumbrances. The Association shall have the right to borrow money to improve, repair, restore and reconstruct the Common Area and to place liens on the Common Area and otherwise encumber the Common Area for such purposes upon the vote or written consent of eighty percent (80%) of the Voting Power of the Association, or such lesser percentage as may be required or permitted by the Act.

ARTICLE 6 COMMON AREA AND LOT MAINTENANCE

6.01. Common Area Maintenance by Association. The Association shall repair and maintain the Common Area and any improvements, utilities and facilities located on the Common Area. The



Association may, but shall not be obligated to, provide enhanced landscaping and maintenance to those areas and medians located within the rights-of-way for streets located within the Property. Any maintenance or enhancement called for herein shall be subject to the applicable governmental authorities' rules and regulations.

The Declarant is responsible for construction of streets and roads within the Property. The Association shall undertake the management, operation, maintenance, repair, servicing, replacement and renewal of all private streets and private utilities constituting Common Areas and all improvements thereon. The Declarant shall be responsible for and maintain all other streets and roads within the Property until such roads are accepted for maintenance by the applicable governmental authority. Following any irrevocable acceptance of the streets and roads for maintenance as public rights of way by applicable governmental entities, the Association shall maintain such streets and roads to the extent such activities are not performed by the applicable governmental entities. Maintenance for private streets, private water lines and private sewer lines shall be the responsibility of the Association along with the maintenance of any private easements.

6.02. Townhome Lot Maintenance by Association. In addition to maintenance upon the Common Area, the Association shall provide exterior maintenance upon each Townhome Lot which is subject to assessment hereunder as follows: paint, repair, replace and care for roofs, gutters, downspouts, exterior building surfaces [with the exception of entry doors (including garage doors) and their appurtenant hardware and all exterior glass including windows and patio doors and all decks or patios, all of which shall be maintained, repaired and replaced by the Townhome Lot Owner] trees, landscaping, grass, fencing, walks, driveways (as hereinafter limited), annual inspections of the alarm systems located on the exteriors of the units for the sprinklers serving the dwellings constructed on the Townhome Lots and other exterior improvements. Such maintenance as to the Townhome Lots shall also include the mowing and trimming of grass; **provided, however, each Townhome Lot Owner is encouraged to water the grass, plants, trees and landscaping on or immediately adjacent to its Townhome Lot in areas that are not otherwise irrigated.** Maintenance of the driveway constructed by the Declarant on each Townhome Lot shall extend only to the exterior face of the garage door, beyond which such maintenance, repair and replacement shall be the responsibility of such Townhome Lot Owner. The Association shall maintain any portion of any sewer main to which such line is connected, provided that the Townhome Lot Owner of each Townhome Lot shall be responsible for all repair, replacement and clean out of sewer lines and facilities located upon such Townhome Lot Owner's Lot behind the clean-out to (and including the lines and facilities servicing) the townhome unit. Exterior maintenance required by the Association hereunder shall not include the cleaning of patios, decks, walkways, stoops or driveways on the Townhome Lots, all of which shall be the responsibility of the Townhome Lot Owner. The determination of the need, quality, extent and cost of such maintenance and repairs shall be made by the Board of the Association, which determination shall be reasonable and made upon consistent and non-arbitrary principles adopted by the Board.

6.03. Maintenance by Single Family Lot Owners. Each Single Family Lot Owner, at all times, shall maintain, repair and otherwise be responsible for his or her Lot and the improvements thereon. Without limiting the generality of the foregoing, and subject to the requirements of Section 13.06 of this Declaration, a Single Family Lot Owner shall be responsible for replacement and reconstruction of improvements on his or her Lot required because of damage or destruction by fire or other casualty, and each Single Family Lot Owner shall maintain, repair and replace the surface and subsurface drainage facilities and appurtenances located on his or her Lot as may be necessary to maintain good and proper drainage of the property and other real property in the vicinity, except for such facilities the maintenance of which has been assumed by the County or other governmental entity. If any Single Family Lot Owner, after Notice and Opportunity for Hearing, fails to maintain, repair and replace such drainage facilities and appurtenances as required herein, the Association, at the expense of such Single Family Lot Owner, shall



maintain, repair or replace such drainage facilities and appurtenances at the sole cost and expense of such Single Family Lot Owner, and the Board, without the vote or written consent of Members, may levy a special assessment against such Single Family Lot Owner to obtain reimbursement therefor as provided in Section 9.07.

No building or other structure shall be placed or permitted to remain on any Lot which may damage or interfere with the use, maintenance, repair or replacement of such drainage facilities and appurtenances and no Single Family Lot Owner shall do any work, construct any improvements, place any landscaping or suffer the existence of any condition whatsoever which shall alter or interfere with the drainage pattern for the Lots or Common Area as established in connection with the approval of the Map(s) of the Property by the Town, except to the extent such alteration in drainage pattern is approved in writing by the Association and all public authorities having jurisdiction. All such drainage facilities and appurtenances shall at all times be accessible to Declarant until the Property is completed and at all times shall be accessible to the Association and all persons installing, using, maintaining, repairing or replacing such drainage facilities and appurtenances. Declarant may from time to time present for recordation in the official records of the County instruments showing approximate locations of subsurface storm drainage facilities and of subsurface groundwater drainage facilities. If for any reason any such instrument is not accepted for recording, Declarant may deliver such instrument to the Association, and the Association shall maintain the same as part of its permanent records. In either event, each Single Family Lot Owner shall be deemed to have notice of the location of such drainage facilities as may be shown in such instrument.

6.04. Maintenance by Townhome Lot Owners. Except as provided in Section 6.02 above, all repair, maintenance and replacement of the improvements and utilities located upon an Townhome Lot Owner's Lot shall be the responsibility of the Townhome Lot Owner thereof, including all replacement and repair necessitated by fire or other casualty against which the Townhome Lot Owner is required to maintain insurance under the provisions of Article 10 hereof. Without limiting the generality of the foregoing, and subject to the requirements of Article 7, Section 10.06 and Section 13.06 of this Declaration, a Townhome Lot Owner shall be responsible for replacement and reconstruction of improvements on his or her Townhome Lot required because of damage or destruction by fire or other casualty. Each Townhome Lot Owner shall maintain, repair and replace, at his or her expense, all exterior light fixtures attached to the Townhome Lot Owner's unit and all interior portions of the improvements which shall need repair, including bathroom and kitchen fixtures, light fixtures or other electrical or plumbing equipment, utility pipes, lines and fittings serving the Townhome Lot. Further, each Townhome Lot Owner shall repair, maintain, and replace, at his or her expense, the heating and air conditioning systems servicing said Townhome Lot Owner's unit, whether located on the Townhome Lot Owner's Lot or in the Common Area adjacent to the Townhome Lot. Each Townhome Lot Owner shall be responsible for interior pest control, **and each Townhome Lot Owner is encouraged to water the grass, plants, trees and landscaping on or immediately adjacent to its Townhome Lot in areas that are not otherwise irrigated.**

6.05. Negligence. The cost of repair or replacement of any improvement to be maintained and kept in repair by the Association, which repair or replacement is required because of the act or omission of any Owner, the Owner's family, guests, or invitees, shall be the obligation of such Owner and shall be added to and become a part of the assessment to which such Lot is subject.

6.06. Right to Enter. After reasonable notice to the occupant (except in the case of an emergency in which no notice shall be required), the Association or its agents shall have access over and upon any Lot when necessary in connection with any repair, maintenance, or replacement of improvements for which the Association is responsible or for the enforcement of this Declaration, and



each Owner shall accept title to his or her Lot subject to such right of access of the Association or its agents.

6.07. Easements for Governmental Access. An easement is hereby established over the Common Area and every Lot for the benefit of applicable governmental agencies for installing, removing, and reading water meters; maintaining and replacing water, sewer and drainage facilities; and acting for other purposes consistent with public safety and welfare, including, without limitation, law enforcement, fire protection, animal control, garbage collection, and the delivery of mail.

6.08. Sign and Landscape Easement. Declarant, for itself, its successors and assigns, including but not limited to the Association, hereby reserves easements over any portion of any Lot designated as "Landscape Easement," "Sign Easement," "Landscape and Sign Easement" or other similar designation on Map(s) of the Property recorded in the public records of the County, for installation, construction, operation and maintenance of landscaping, berms, retaining walls, drainage facilities, private utilities, lighting and sprinkler systems, if any, monuments, fencing, signage and other improvements as installed by Declarant on such areas. No fences, structures, driveways, plantings, swings or any other objects, temporary or permanent, shall be permitted in such easements other than those initially installed by Declarant, or its designated successor, without Declarant's prior written approval or, after all Lots are occupied by Owners, the Association's prior written approval. The Association shall at all times have the right of access for its employees, agents and subcontractors over the above-described easement areas for the purpose of constructing, improving, repairing, replacing, landscaping, planting, mowing and otherwise maintaining the area and amenities within such easements. The owners of any Lot containing any portion of these easements shall maintain the area not maintained or landscaped by the Declarant or the Association. The reservation of this easement imposes no obligation on Declarant, its successors and assigns, or the Association, to continue to maintain the planting, retaining walls, landscaping or other improvements located within the described easements.

6.09. Professional Management. In the event that Declarant or the Association enters into any contract with any person or entity to provide management or maintenance services to the Common Area, such contract shall not exceed one (1) year and shall provide that the Association shall have the right to terminate the contract for cause or without cause upon thirty (30) days' written notice without payment of a termination fee.

ARTICLE 7 USE RESTRICTIONS

In addition to the architectural control restrictions set forth in Article 13 below, the following use restrictions apply to the Property:

7.01. Residential Use. Except as otherwise provided in this Declaration, Lots shall be used for residential purposes and for no other purpose. The Association shall not interfere with any Owner's freedom to determine the composition of his/her household, except that it may enforce reasonable occupancy limits. Except with respect to construction trailers or model homes which may be used or occupied by Declarant, no Owner shall use or cause or permit to be used his or her Lot for any business, commercial, manufacturing or mercantile use or purpose, or for any other nonresidential use or purpose. The foregoing notwithstanding, it shall be expressly permissible for Owners to conduct certain business or commercial activities within their residence which do not conflict with local zoning ordinance restrictions and regulations. No such activity shall be conducted which shall unduly burden traffic flows within the Property or cause the parking of non-resident vehicles upon the street for unreasonable or excessive periods of time. It shall be within the discretion of the Board to determine, on a case-by-case



basis, which commercial and business related activities will be compatible with the residential nature of the subdivision.

7.02. Unlawful Activity. No unlawful activity shall be conducted on any Lot or in any other part of the Property. Nothing shall be done within the Property that is an unreasonable annoyance, inconvenience or nuisance to the residents of the Property, or that unreasonably interferes with the quiet enjoyment of occupants of Lots. No doorways, walkways or streets shall be obstructed in any manner which would interfere with their use for ingress or egress in the event of fire, earthquake or other emergency.

7.03. Property Owners Parking Rights. Unless otherwise permitted by the Rules and Regulations no boat, trailer, recreational vehicle, camper, or camper truck shall be parked, stored or left (a) on any undesignated part of the Common Area, (b) in any parking space, (c) on any other part of a Lot, (d) or otherwise within the Property. This restriction shall not apply to sales trailers, construction trailers, or other vehicles which may be used by Declarant or a builder (provided that such builder obtains the prior written approval of Declarant) and their agents and contractors in the conduct of their business prior to the Completion of Sales. No vehicle of any type which is abandoned or inoperative shall be stored or kept on any part of the Common Area or on any Lot, and no automobiles or other mechanical equipment may be dismantled or parts thereof stored on any said Lot. No vehicles of any type shall be parked on the sidewalk, nor shall vehicles of any type be parked or stored on any part of a Lot not improved for that purpose (i.e., a garage, driveway or parking pad), excepting occasional overflow parking for guests or other reasonable purposes provided that no inconvenience is imposed on the Owners of other Lots. No repairs to or maintenance of any automobile or other vehicle shall be made or performed on any driveway within the Property, except in the case of emergency and except as may be permitted by the Rules and Regulations.

There shall be a maximum of two (2) vehicles permitted per household for each Townhome Lot. There shall be no parking limitation for Single Family Lots. To enhance the streetscape in the Property, it shall be required that each Owner park its vehicles in the garage on the Lot whenever possible. All garages shall be used primarily for the storage of vehicles. No vehicles of any type shall be parked on the sidewalk, nor shall vehicles of any type be parked or stored on any part of a Lot other than in the garage or driveway of such Lot, excepting occasional overflow parking for guests or other reasonable purposes provided that no inconvenience is imposed on the Owners of other Lots

An Owner, his household or tenants shall not park any vehicle in any undesignated portion of the Common Area or overnight on the street rights of way within the Property, provided such private restriction relative to overnight parking is permitted by the Legal Requirements. Parking in any Common Area facility parking lot shall be limited to the hours of operation of such facility. Owners shall be subject to sanctions if the parking regulations are violated. Sanctions may include reasonable monetary fines not to exceed \$100.00 per day and suspension of the right to vote and to use any facilities within the Common Area after Notice and Opportunity for Hearing (except drainage rights and rights of access to Lots). In addition, the Association, through the Board, after notice to the Owner, shall have the right to exercise self-help to cure violations, including the towing of vehicles at the Owner's expense. The Association shall have the right to require the Owners to register the license plate number of any vehicle of the Owner or any member of its household with the Association.

7.04. Signs and Curtains. No Owner shall place on or about any window any metallic foil or other coating, substance or material which similarly acts as a reflector of light nor shall an Owner place newspapers or bed sheets in any window. Except as otherwise required by the Town, no sign of any kind shall be displayed to the public view on any Lot other than one sign of not more than nine (9) square feet advertising a Lot for sale and signs of not more than nine (9) square feet expressing support of or



opposition to political candidates or other issues which will appear on the ballot of a primary, general or special election, *provided that* such political signs shall not be placed on a Lot earlier than sixty (60) days before such election and shall be removed within two (2) days after such election. No sign of any kind shall be displayed in or on the Common Area without the prior written consent of the ACC. Notwithstanding the foregoing, Declarant or its agents shall have the right to erect and maintain signs of any type and size on any Lot which it owns and on the Common Area in connection with the development and sale of the Lots.

7.05. Antennas. As provided in Article 13, except for such as are covered by, and installed in strict compliance with, the requirements of the Telecommunications Act of 1996, as amended, no Owner shall construct, install, erect or maintain any outside television or radio pole or receiving antenna, including a satellite dish antenna, and no outdoor television antenna or satellite dish may be erected or installed by an Owner or permitted by an Owner to remain on his or her Lot, without the express written approval of the Architectural Control Committee.

7.06. Intentionally Deleted.

7.07. Fences and Shrubbery. Except as may be constructed by Declarant, no fence or wall shall be erected upon any Lot unless plans therefor have been approved, in advance, by the Architectural Control Committee pursuant to the provisions of Article 13. Chain link fencing is expressly prohibited. No hedge, shrubbery, or other planting, nor other plant screening shall be installed on any Lot except with the prior written permission of the Architectural Control Committee.

7.08. Pets.

(a) No animals shall be raised, bred or kept on any Lot or the Common Area, except that dogs, cats, or other household pets may be kept or maintained provided that they are not kept or maintained for commercial purposes. The number of household pets generally considered to be outdoor pets, such as dogs, cats, et cetera, shall not exceed a total of three (3) in number except for newborn offspring of such household pets which are under nine (9) months of age. No animal shall be allowed if such animal constitutes an unreasonable annoyance, inconvenience or nuisance to any other Owner. If the Board receives any complaint that an animal constitutes an unreasonable annoyance, inconvenience or nuisance, including, but not limited to a complaint that an Owner's animal is being neglected, improperly treated, or not properly restrained upon such Owner's Lot, or if upon Common Area, not properly leashed, the Board shall afford the Owner of such animal Notice and Opportunity for Hearing, and may require the complainant to present evidence of unreasonable annoyance, inconvenience or nuisance at the hearing, and if the Board finds that such animal constitutes an unreasonable annoyance, inconvenience or nuisance, the Board may require that such animal be removed from the Property. Excepting domesticated cats, any time that an animal is outside, it must be on a leash and accompanied by the Owner, or some other person. Excepting domesticated cats, animals shall not be left unattended outside even when chained or contained inside a fence, except as may otherwise be approved in writing by the ACC. At no time shall animals be allowed to be chained or tied in the Common Area. Each Owner shall also be responsible for cleaning up the feces of its animals both on its Lot and on the Property.

(b) The Board may adopt Rules and Regulations concerning animals which are more restrictive than the provisions of this Declaration, including (if not already mandated by applicable laws of the Town) rules requiring that all animals be kept on a leash when in the Common Area and/or that animals be restricted to designated areas within the Common Area.



The Board may adopt a rule prohibiting certain pets, which is more restrictive than the provisions of this Declaration, except that such rule shall not apply to animals residing in the Property at the time such rule is adopted. In any event, the Board at any time may require that any animal found to be an unreasonable annoyance, inconvenience or nuisance be removed as provided in Section 7.08(a).

7.09. Trash and Vegetation. No trash, rubbish, garbage or other waste material shall be kept or permitted upon any Lot or the Common Area, except in sanitary containers located in a garage or, if there is no garage, in an appropriate area screened and concealed from view (except for the periods immediately preceding and subsequent to pick up by the applicable disposal service). No weeds, vegetation, rubbish, debris, garbage, waste materials or materials of any kind whatsoever shall be placed or permitted to accumulate on any Lot or any portion of the Property which would render it unsanitary, unsightly, offensive, or detrimental to any property in the vicinity thereof or to the occupants of any property in such vicinity, except as is temporary and incidental to the bona fide improvement of any portion of the Property. Job site debris shall be removed from all Lots at least weekly. Grass, hedges, shrubs, vines and mass planting of any type on any Single Family Lot or any portion of the Property shall be kept trimmed and shall at regular intervals be mowed, trimmed and cut so as to appear neat and attractive. Trees, shrubs, vines and plants which die shall be promptly removed. No leaves, trash, garbage or other similar debris shall be burned except as permitted by the appropriate governmental authority.

7.10. Nuisance. No noxious or offensive activity shall be carried on in or upon any part of the Property nor shall anything be done thereon which may be or become an unreasonable annoyance, inconvenience or nuisance to the residents of the Property or unreasonably interfere with the quiet enjoyment of occupants of Lots. No Owner shall permit anything to be done or kept on his or her Lot which would result in the cancellation of insurance on said Lot or any other residence or any part of the Common Area or which would be in violation of any law.

7.11. Outbuildings, Yard Art, Gazebo, Trampolines, Awnings, Freestanding Flagpoles and Above-Ground Pools. Except as may be permitted by the Architectural Control Committee, no Owner shall construct, install, erect or maintain upon any Lot any outbuilding, yard art, storage shed (unless erected by Declarant), gazebo, trampoline, awning or freestanding flagpole (provided, flags may be displayed using a bracket or other approved device mounted to a dwelling so long as the size of the flag displayed does not exceed a standard size as same may be determined by the Architectural Control Committee). In no event shall any outbuilding, storage shed, gazebo, or trampoline be constructed on any Lot in the front or side yards, as determined by the building lines applicable to the Lot. No above-ground pools (except for wading pools no deeper than 2 feet tall and no wider than 10 feet in diameter, which shall be regulated by the Architectural Control Committee) shall be allowed or approved by the Architectural Control Committee on any Lot. Wading pools shall only be allowed during appropriate weather and must be emptied and stored when not in use.

7.12. Temporary Structures. No temporary structures shall be placed upon any portion of the Property at any time; provided, however, this restriction shall not prohibit construction trailers or shelters or sheds used by Declarant or any builder or its contractors during the development of the Property or the construction of improvements or additions to any Lot. Tents (except tents as used temporarily for recreation), recreational vehicles and trailers (whether attached or unattached to the realty) may not, at any time, be used as a temporary or permanent residence or be permitted to remain on any portion of the Property.



7.13. ACC Approval of Plans and Other Prohibitions.

(a) The construction of improvements on Lots shall be completed pursuant to the Plans in accordance with Article 13. In addition, Lots shall comply with all applicable building, plumbing, electrical and other codes.

(b) All window treatments must be in keeping with the overall scheme and aesthetic of the Property. Any window treatments deemed not to be in keeping with the overall scheme and aesthetic of the Property shall be removed by the Owner in the discretion and at the direction of the ACC.

(c) No vents, pipes or other appendages may extend from the front of any dwelling on a Lot, unless screened from public view by screening material or shrubbery approved by the ACC.

(d) Any exterior air-conditioning or heating equipment added after the completion of construction must be approved by the ACC and be screened from public view by screening material or shrubbery approved by the ACC.

(e) Exterior lighting shall be shielded and must be directed so as not to shine directly on another Lot.

(f) No yard art (including, without limitation, any windmills, figurines, or sculptures) may be installed on a Lot unless approved by the ACC.

(g) No hanging plants may be installed on a Lot unless approved by the ACC.

(h) No furniture (including, without limitation, tables, chairs, and grills) may be located or stored on any front porch unless approved by the ACC.

7.14. Trees and Foliage. Trees measuring four (4) inches or more in diameter at a point two (2) feet above ground level and any flowering trees or shrubs above four (4) feet in height may not be removed from the Property without the prior written approval of the ACC, unless such landscaping material is in the path of driveways and walkways located or to be located on any Lot. Excepted herefrom shall be damaged or diseased trees that threaten persons or property, which damaged or diseased trees shall be removed by the Owner.

7.15. Motorized Vehicles. All motorized vehicles operating within the Property must be properly muffled so as to eliminate noise which might be offensive to others. All motorized vehicles and motorized bicycles are prohibited from being used or operated anywhere other than on the streets, roads, parking lots and driveways within the Property.

7.16. Mail and Delivery Boxes. The ACC shall determine the standards and issue guidelines for the location, material, color and design for mail and newspaper boxes, if any, and the manner in which they shall be identified. All Owners must display the assigned street address on their mail boxes, or other appurtenance, pursuant to the then current regulations of the Town or other appropriate governmental entity. No mailboxes nor additions nor modifications to the standard mailbox shall be allowed or approved by the Architectural Control Committee on any Lot.

7.17. Underground Storage Tanks. No underground storage tanks for natural gas, propane, chemicals, petroleum products or any other toxic product will be allowed anywhere in the Property.



7.18. Declarant's Rights. Notwithstanding anything to the contrary contained in this Article or elsewhere in this Declaration, Declarant, its agents, employees and contractors shall not be restricted or prevented by this Declaration from doing, and Declarant, its agents, employees and contractors shall have the right to do such things or take such actions as they deem necessary, advisable or convenient for completion and improvement of the Property as a residential community and for the sale, rental or other disposition of Lots in the Property. The rights of Declarant, its agents, employees and contractors shall include, without limitation:

(a) The right and easement of ingress in, over and upon the Common Area and any Lot for the purpose of performing on any part or parts of the Property acts deemed necessary, advisable or convenient for the completion and improvement of the Property as a residential community and for the sale, rental or other disposition of Lots;

(b) The right to erect, construct, maintain, demolish or remove structures and other improvements on any Common Area as they deem necessary, advisable or convenient for the completion and improvement of the Property as a residential community and for the sale, rental or other disposition of Lots; and

(c) The right to use Lots and improvements owned by Declarant as models, sales offices and contractor's offices and to construct and display promotional, informational and directional signs and other sales aids on or about any portion of the Property.

The rights reserved under this Section shall terminate one (1) year after the Completion of Sales. Amendment of this Section shall require the vote or written consent of seventy-five percent (75%) of the Voting Power of the Association. Further, no amendment of this Section can be made without the written approval of Declarant.

7.19. Right to Enter. Any governmental agency, including, but not limited to the Town or County, their agents and employees, shall have the right of immediate access to any Lot and to the Common Area at all times if necessary for the preservation of public health, safety and welfare.

7.20. Affordable Housing Units. Townhome Lots 1, 2, 3, 4, 5, 6, 7, 25, 26, 27, 28, 29, 30, 31, 32, 33, and 34 in the Ballentine Subdivision shown on the plats recorded in Book of Maps 108, Page 57, and Book of Maps 108, Page 150, Orange County Registry are hereby restricted by Declarant for use as "affordable housing units," as such term is defined in Section 182.4 of the Town of Carrboro Land Use Ordinance (each, an "Affordable Housing Unit" and collectively, the "Affordable Housing Units"). Each Affordable Housing Unit shall remain an Affordable Housing Unit for a period of 100 years from the date of the initial occupancy of the unit (the "Restriction Period"). Pursuant to the Conditional Use Permit for the Ballentine Subdivision recorded in Book 4407, Page 340, as amended in Book 5045, Page 104, Orange County Registry ("Conditional Use Permit"), Declarant will construct the Affordable Housing Units, obtain certificates of occupancy for such units and make such units available for transfer to the Land Trust. If the Land Trust is unable to lease or contract to sell an Affordable Housing Unit within one year after a certificate of occupancy has been issued, Declarant shall be released from its obligation to sell the unit to the Land Trust and shall sell the Affordable Housing Unit in accordance with the provisions of the Town of Carrboro Land Use Ordinance in existence prior to June 26, 2007, a copy of which is attached hereto as Exhibit D. The provisions of this Section 7.20 may be included in each deed or other document conveying an interest in an Affordable Housing Unit, including, without limitation, a ground lease between the Land Trust and a lessee, and, regardless of whether these restrictions are in fact contained in the deed or other conveyance, shall run with title to such Affordable Housing Unit and be binding upon all persons having an interest therein until the end of the Restriction Period, at which time these restrictions shall automatically expire. The Town and the Association, jointly or separately, shall



have the right to enforce the provisions of this Section 7.20 by an action in law or in equity. This restriction shall be governed by the Conditional Use Permit, and to the extent the Conditional Use Permit is modified, this Section 7.20 shall be amended automatically without further action to reflect such modifications.

ARTICLE 8 MEMBERSHIP AND VOTING RIGHTS

8.01. Governing Body. The Association shall be the governing body for all Owners with respect to the management, administration, maintenance, repair and replacement of the Property, as provided by this Declaration and the Bylaws.

8.02. Membership. Membership in the Association shall be composed of and limited to Owners. Each Owner, including Declarant, shall automatically be a Member of the Association and entitled to vote as set forth below. Membership shall be appurtenant to and may not be separated from ownership of a Lot. Upon termination of ownership, an Owner's membership shall automatically terminate and be automatically transferred to the new Owner of the Lot.

8.03. Voting. The Association shall have two classes of voting membership:

Class A. Class A Members shall be all Owners with the exception of Declarant and the Approved Builders; provided, however, that Declarant shall become a Class A Member when its Class B membership ceases as provided hereinafter and Class C Members shall become Class A Members upon termination of the Class B membership. Class A Members shall be entitled to one (1) vote for each Lot owned. When more than one person holds an ownership interest in any Lot, all such persons shall be Members, but no more than one vote shall be cast with respect to any Lot. The vote for any such Lot shall be exercised as the Members holding an interest in such Lot determine among themselves. In the event of disagreement, the decision of Members holding a majority of interest in such Lot shall govern. Unless otherwise notified by a co-owner as to a dispute between the co-owners regarding their vote prior to the casting of that vote, the vote of any co-owner shall be conclusively presumed to be the majority vote of the Owners of that Lot.

Class B. Class B Member shall be Declarant which shall be entitled to ten (10) votes for each Lot owned; provided that Declarant's Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier: (a) the Completion of Sales; or (b) ten (10) years after the first Lot is conveyed to an Owner for use as a residence.

Class C. Class C Members shall be all Approved Builders. Each Approved Builder shall be entitled to three (3) votes for each Lot that it owns, so long as the Class B membership continues to exist. Upon termination of the Class B membership, Class C membership shall be converted to Class A membership for voting purposes (but, despite such conversion, Lots owned by an Approved Builder shall continue to be treated as Class C Lots for assessment purposes so long as such Approved Builder owns any Lots). Lots owned by a Class C Member shall be Class C Lots.

8.04. Commencement of Voting Rights. Voting rights attributable to an ownership interest shall not vest until the Annual Assessment against that interest has been levied by the Association as



provided in Article 9; provided, however, that voting rights shall be immediately vested with respect to the approval of any amendments to this Declaration.

8.05. Declarant's Voting Rights. Declarant shall have the right to cast votes attributable to Lots owned by Declarant on all matters submitted to a vote of the Members.

8.06. Control by Declarant. Notwithstanding any other language or provision to the contrary in this Declaration, in the Articles, or in the Bylaws, Declarant hereby retains the right to appoint and remove any person, whether or not an Owner, on the Board of Directors of the Association and any officer or officers of the Association until ninety (90) days after the first of the events to transpire outlined in Section 8.03 above concerning the termination of the Class B Member status of Declarant or the surrender by Declarant of the authority to appoint and remove directors and officers by an express document relinquishing such rights executed and recorded by Declarant. Upon the expiration of the period of Declarant's right to appoint and remove directors and officers of the Association pursuant to the provisions of this Section, such right shall automatically pass to the Owners, including Declarant if it then owns one or more Lots; and a special meeting of the Association shall be called for and held within ninety (90) days from the date of the expiration of Declarant's rights hereunder. At such special meeting the Owners shall elect a new Board of Directors which shall undertake the responsibilities of running the Association and Declarant shall deliver the books, accounts, and records, if any, which they have kept on behalf of the Association as well as any agreements or contracts executed by or on behalf of the Association which may still be in effect or operation, which contracts and agreements, to the extent they are not bona fide or are unconscionable, may be terminated by the new Board of Directors upon not less than ninety (90) days notice to the other party in accordance with Section 47F-3-105 of the Act. The Board of Directors shall include at least one (1) Townhome Lot Owner if the Board is comprised of three (3) members and shall include at least two (2) Townhome Lots Owners if the Board is comprised of five (5) members. Each Owner by acceptance of a deed to or other conveyance of a Lot vests in Declarant such authority to appoint and remove directors and officers of the Association as provided in this Section.

ARTICLE 9 COVENANTS FOR ASSESSMENTS

9.01. Covenant to Pay Assessments; Lien. Declarant, for each Lot owned by Declarant, hereby covenants to pay, and every Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, covenants and agrees to pay, to the Association such Annual Assessments or charges; Townhome Lot maintenance assessments (as applicable to Townhome Lots); and such special assessments or charges as may be levied by the Association pursuant to the provisions of this Declaration. The amount of any such annual or special assessment, and Townhome Lot maintenance assessment, plus any other charges thereon, such as interest, late charges and costs (including attorneys' fees), as such may be provided in this Declaration or the Act, shall be and become a lien upon the Lot assessed as provided in §47F-3-116 of the Act when such annual or special assessment remains unpaid for a period of thirty (30) days or longer and the Association causes to be recorded in the office of the clerk of superior court in the County a claim of lien, which claim shall state:

- (a) The amount of such assessment and such other charges thereon as may be authorized by this Declaration and the Act;
- (b) A description of the Lot against which the same has been assessed; and
- (c) The name of the record owner of the Lot assessed.



Upon payment of such assessment and charges in connection with which such notice has been so recorded, or other satisfaction thereof, the Association, at the Owner's cost and expense, shall cause to be recorded a cancellation of claim of lien stating the satisfaction and the release of the lien thereof. The lien shall have priority over all liens or claims created subsequent to the recordation of the claim of lien except for (i) tax liens for real Property taxes on the Lot, (ii) assessments on any Lot in favor of any municipal or other governmental body and (iii) the lien of any Mortgage or the lien of any other encumbrance recorded before the docketing of the claim of lien in the office of the clerk of court. The lien may be enforced by foreclosure in accordance with North Carolina law, or in any other manner permitted under the Act or by law. The Association shall have power to purchase the Lot at a foreclosure sale and to hold, lease, mortgage and convey the same. Before filing a claim of lien against any Lot, the Association shall make reasonable and diligent efforts to ensure that its records contain the Owner's current mailing address and make a written demand to the defaulting Owner for payment of the delinquent Assessments together with late charges, interest, reasonable collection costs and reasonable attorneys' fees, if any. The Owner shall be notified in writing of the Association's intent to seek payment of attorneys' fees and court costs in accordance with §47F-3-116(e1) of the Act.

The claim of lien shall be subordinate to the lien of any first mortgage or the lien of any other encumbrance recorded before the docketing of the claim of lien in the office of the clerk of court. The sale or transfer of any Lot shall not affect the lien except that the sale or transfer of a Lot pursuant to judicial or nonjudicial foreclosure of a first mortgage or any bona fide, good faith proceeding in lieu thereof shall extinguish the lien as to payments which became due prior to the sale or transfer. Such unpaid Assessments shall be deemed Common Expenses collectible from all Owners, including the purchaser at foreclosure. In addition, no sale or transfer shall relieve the Lot from liability for any Assessments thereafter becoming due or from the lien thereof.

9.02. Personal Obligation. Each Annual Assessment or Special Assessment and Townhome Lot maintenance assessment, together with any late charges, interest, collection costs and reasonable attorneys' fees, shall be the personal obligation of each person or entity, other than any Mortgagee, who held an ownership interest in the Lot at the time such assessment was levied. If more than one Person held an ownership interest in the Lot at such time, the personal obligation to pay such assessment or installment respecting such Lot shall be both joint and several. No Owner may exempt himself or herself from payment of assessments, or installments, by waiver of the use or non-use of common facilities within the area or of any other portion of the Common Area or by abandonment or leasing of his or her Lot.

9.03. Use of Assessments. Annual Assessments or Special Assessments paid by Declarant and other Owners shall be used to pay the Common Expenses of the Association. Townhome Lot maintenance assessments shall be used only for the maintenance of the Townhome Lots and those portions of the Common Area located on the Townhome Property or designated on the Maps or the reserve fund for same. The foregoing is intended as an authorization of the Association and shall not be construed to require expenditure of Association funds for any particular purpose.

9.04. Reserve Funds. The Board shall establish and maintain reserves in accordance with standard accounting practices and procedures for Common Area replacements and maintenance and the initial budget of the Association. In addition, the Board shall establish and maintain a Townhome Lot reserve account to provide for future maintenance and replacement of alleys servicing the Townhome Lots (hereinafter, "Townhome Maintenance Reserve"). Each budget subsequently adopted by the Board shall provide for funds to be placed in reserves in the discretion of the Board unless a different level of reserves is approved by the vote or written consent of a majority of the Voting Power of the Association. Funds deposited in reserve for a particular purpose shall be held for that purpose and shall not be



expended for any other purpose without the vote or written consent of a majority of the Voting Power of the Association, except that if the Board determines that funds held in reserve for a particular purpose exceed an amount reasonably required as a prudent reserve for that purpose, then, without the vote or written consent of Members, the excess may be allocated to any other reserve fund established by the initial budget of the Association and expended for the purpose for which such other reserve fund has been established.

9.05. Regular Annual and Townhome Lot Maintenance Assessments.

(a) The Annual Assessment for each Lot owned by a Class A Member for the first assessment year shall be a maximum of \$576.00; provided, however, that if the first assessment year shall have fewer than twelve months, the foregoing amounts shall be proportionately reduced. The Annual Assessment for each Lot owned by a Class B Member shall be zero; provided, however, Declarant shall be obligated to fund any budget deficit pursuant to Section 9.12. The Annual Assessment for each Lot owned by a Class C Member shall be one third of the Annual Assessment for Lots owned by Class A Members. In addition to the Annual Assessment for each Lot provided above and as a component thereof, each Townhome Lot owned by a Class A Member shall be subject to a Townhome Lot maintenance assessment which for the first assessment year shall be \$1,056.00; provided that if the first assessment year shall have fewer than twelve months, the foregoing amount shall be proportionately reduced. On the first day of the month next following the initial conveyance to the Association of all or part of the Common Area, the Board shall adopt a proposed budget and fix the amount of the Annual Assessment as to each Lot and the amount of the Townhome Lot maintenance for each Townhome Lot for the then current calendar year, and shall thereafter adopt a proposed budget for each subsequent calendar year at least thirty (30) days prior to January 1 of such calendar year. The Association shall send written notice of the amount of the Annual Assessment and the Townhome Lot maintenance assessment and a summary of the proposed budget, as well as the amount of the payment due, to each Owner within thirty (30) days after the adoption by the Board of such budget. To the extent required by North Carolina General Statutes 47F-3-103(c) or other applicable law, such notice shall include notice of a meeting of the Members to consider ratification of the budget, including a statement that the budget may be ratified without a quorum. If such a meeting is required by N.C. General Statutes 47F-3-103(c), or other applicable law, the Board shall set a date for a meeting of the Members to consider ratification of the budget to be held not less than ten (10) nor more than sixty (60) days after mailing of the summary and notice. If such meeting is required as set forth above, there shall be no requirement that a quorum be present at the meeting. If the proposed budget to be voted on at any such meeting is within the maximum increase limits set forth in subsection (b) below, the budget is ratified unless at such meeting Members exercising all of the Voting Power in the Association reject the budget. If the proposed budget to be voted on at any such meeting exceeds the maximum increase limits set forth in subsection (b) below, the budget is ratified unless at such meeting Members exercising a majority of the Voting Power in the Association reject the budget. The failure of the Association to send, or of a Member to receive, such notice shall not relieve any Member of the obligation to pay Annual Assessments.

(b) For years following the year in which the initial conveyance of all or a part of the Common Area occurs and thereafter, the Board, by a vote in accordance with the Bylaws, without a vote of the Members (unless required under N.C. General Statutes 47F-3-103(c) or other applicable law, in which case the procedures set forth in subsection [a] above shall apply), may increase the Annual Assessment and the Townhome Lot maintenance assessment each year by a maximum amount equal to the previous year's Annual Assessment and the Townhome Lot maintenance assessment times the greater of (i) ten percent (10%) or (ii) the annual percentage increase in the CPI for the most recent 12-month period for which the CPI is available. If the CPI



is discontinued, then the index most similar to the CPI (published by the United States Government indicating changes in the cost of living) shall be used.

(c) From and after the first year of Annual Assessments, the maximum annual assessment and the Townhome Lot maintenance assessment may be increased above the maximum amount set forth above by a vote of a majority of the Voting Power, plus the written consent of Declarant (so long as Declarant owns any part of the Property).

(d) The Board may fix the Annual Assessment and the Townhome Lot maintenance assessment at an amount not in excess of the maximum set forth above (the "Maximum Annual Assessment"), subject to the procedures set forth in subsection (a) above if applicable. If the Board shall levy less than the Maximum Annual Assessment for any calendar year and thereafter, during such calendar year, determine that the important and essential functions of the Association cannot be funded by such lesser assessment, the Board may, by vote in accordance with the Bylaws, levy a supplemental Annual Assessment ("Supplemental Annual Assessment"), subject to the procedures set forth in subsection (a) above, if applicable. In no event shall the sum of the Annual Assessments and Supplemental Annual Assessments (and, with respect to the Townhome Lots, the sum of the Townhome Lot maintenance assessment and Supplemental Annual Assessment) for any year exceed the applicable Maximum Annual Assessment for such year other than as set forth herein.

9.06. Special Assessments. In addition to the Annual Assessment and Townhome Lot maintenance assessments authorized herein, the Board may levy, in any assessment year, special assessments as follows:

(a) Common Area. In addition to the Annual Assessments authorized herein, the Board may levy, in any assessment year, a special assessment against all Owners applicable to that year only for the purpose of defraying in whole or in part the cost of any construction, reconstruction, repair or replacement of capital improvements and related fixtures and personal property on or comprising a part of the Common Area; including, without limitation, any stormwater detention or retention facility located on the Common Area; provided, however, any such assessment shall be in the ratio of ten (10) to one (1) for Lots owned by Class A Members and Class B Members, respectively, and in the ratio of three (3) to one (1) for Townhome Lots owner by Class A Members and Class C Members, respectively, as provided in Section 9.08 below and further provided in any fiscal year, Special Assessments which exceed ten percent (10%) of the budgeted gross expenses of the Association for that fiscal year may not be levied without the vote or written consent of sixty-seven percent (67%) of the Voting Power of the Association.

(b) Townhome Lots. In addition to the Annual Assessments and Townhome Lot maintenance assessments authorized herein, the Board may levy, in any assessment year, special assessments against all Townhome Lot Owners applicable to that year only for the purpose of defraying in whole or in part the cost of any construction, reconstruction, repair or replacement of capital improvements and related fixtures and personal property in connection with the maintenance of Townhome Lots and the private roadways servicing same; provided, however, any such assessment shall be in the ratio of ten (10) to one (1) for Townhome Lots owned by Class A Members and Class B Members, respectively, and in the ratio of three (3) to one (1) for Townhome Lots owner by Class A Members and Class C Members, respectively, and further provided in any fiscal year, special assessments which exceed five percent (5%) of the budgeted gross expenses of the Association for that fiscal year may not be levied without the vote or written consent of a majority of Members who are Townhome Lot Owners.



9.07. Assessment as Remedy. After Notice and Opportunity for Hearing, the Board, without the vote or written consent of Members, may levy a special assessment against an Owner as a remedy to reimburse the Association for costs (including attorneys' fees) incurred in bringing the Owner, his or her Lot or his or her residence into compliance with the provisions of this Declaration, the Bylaws or the Rules and Regulations.

9.08. Allocation of Assessments. All Annual Assessments, Townhome Lot maintenance assessments and Special Assessments shall be levied equally against all Owners, except:

(a) Annual Assessments levied on Lots owned by a Class A Member shall be a maximum of \$576.00 per annum for the first assessment year as adjusted for subsequent years in accordance with Section 9.05; Annual Assessments levied on Townhome Lots owned by a Class A Member shall be a maximum of \$1,632.00 per annum (\$576.00 plus Townhome Lot maintenance assessment in the amount of \$1,056.00 equals \$1,632.00) for the first assessment year as adjusted for subsequent years in accordance with Section 9.05; Annual Assessments levied on Lots owned by a Class B Member shall be zero; provided, however, Declarant shall be obligated to fund any budget deficit pursuant to Section 9.12; and Annual Assessments levied on Lots and Townhome Lots owned by a Class C Member shall be a maximum of \$192.00 per annum per Lot and a maximum of \$544.00 per annum per Townhome Lot, respectively, for the first assessment year as adjusted for subsequent years in accordance with Section 9.05.

(b) Special Assessments shall be in the ratio of ten (10) to one (1) for Lots owned by Class A Members and Class B Members, respectively, and in the ratio of three (3) to one (1) for Townhome Lots owner by Class A Members and Class C Members, respectively.

9.09. Commencement of Assessments; Time of Payment. The Annual Assessments and Townhome Lot maintenance assessments provided for herein shall commence as to all Lots in Ballentine on the first day of the month next following the conveyance of the first Lot improved with a dwelling to a purchaser (other than a successor Declarant) for use as a residence. The first assessment year shall be the period commencing on the date Annual Assessments and Townhome Lot maintenance assessments commence and ending on the December 31 next following. The Annual Assessment for the first assessment year shall be prorated from the amounts fixed by the Board for a full twelve-month year, based on the number of months to be contained in the first assessment year. Subsequent assessment years shall be each successive calendar year; provided, however, that at any time the Board may change the assessment year to correspond to a fiscal year selected by the Board. Assessments of Lots within each Phase of the Property which is annexed in accordance with the provisions of Article 15 below shall commence on the first day of the month next following the conveyance of the first Lot improved with a dwelling to a purchaser (other than a successor Declarant) for use as a residence.

Owners shall pay assessments in the manner and on the dates the Board establishes. The Board may require advance payment of assessments at closing of the transfer of title to a Lot and may impose special requirements for Owners with a history of delinquent payment. If the Board so elects, assessments may be paid in annual, semiannual, quarterly or monthly installments. Unless the Board otherwise provides, the Annual Assessment shall be due and payable in four (4) quarterly installments. If any Owner is delinquent in paying any assessments or other charges levied on his Lot, the Board may require that the outstanding balance on all assessments be paid in full immediately.

9.10. Revised Assessments. Subject to the provisions of Section 9.05, if at any time during the course of any year the Board shall deem the amount of the Annual Assessment and Townhome Lot maintenance assessment to be inadequate or over adequate by reason of a revision of its estimate of either



expenses or income or otherwise, the Board shall have the right, at a regular or special meeting, to revise the Annual Assessment or Townhome Lot maintenance assessment for the balance of the assessment year. Any such revised assessment shall become effective on the first day of the month next following the date of adoption, and additional amounts payable shall be due (or refunds of overages shall be made by the Association) at such time as determined by the Board.

9.11. Delinquent Assessments; Fines. Any assessment not paid within thirty (30) days after the due date shall be delinquent. The Board may require that any delinquent assessment bear a late charge to cover administrative expenses incurred as a result of the late payment of the assessment. Late charges on delinquent assessments and fines levied as provided in Section 4.12 may be imposed in an amount not to exceed the greater of (i) ten percent (10%) of the amount of the unpaid Assessment, or (ii) twenty dollars (\$20.00) per month. The Association may bring a legal action against the Owner personally obligated to pay a delinquent assessment or fine and, after Notice and Opportunity for Hearing, the Association may suspend a delinquent Owner's membership rights in the Association (except drainage rights and rights of access to Lots) while the assessment or fine remains unpaid. In any legal action to enforce payment of an assessment or fine, the Association shall be entitled to recover interest, costs and reasonable attorneys' fees.

9.12. Declarant's Obligation to Fund Budget Deficits. Declarant shall satisfy all obligations for Annual Assessments on Lots which it owns by funding the budget deficit during the period of Declarant control described in Section 8.06. The budget deficit is the difference between the amount of Annual Assessments levied on Class A Member-owned Lots, plus any other income received during the calendar year, and the amount of the Association's actual expenditures during the calendar year, including reserve contributions. Upon the expiration of the period of Declarant control, Annual Assessments on Lots owned by Declarant shall be zero and, in the event a deficit results, the Association, and not Declarant, shall be responsible for such deficit and its funding.

Declarant may fund the deficit in the form of cash or by "in kind" contributions of services or materials, or by a combination of these. Said "in kind" contracts or arrangements may be terminated upon ninety (90) days notice by the Association at any time after the termination of the Declarant control period as described in Section 8.06.

Declarant's obligation to fund the budget deficit during the period of Declarant control, together with interest thereon and costs of collections, including, but not limited to, reasonable attorneys' fees, are hereby declared to be a charge and continuing lien upon each Lot owned by Declarant. Said lien shall be effective only if its obligation remains unpaid for a period of thirty (30) days or longer and from and after the time of the recordation in the official records of the County of a notice of assessment in accordance with Section 9.1. Upon full payment of all sums secured by any such lien, Declarant shall be entitled to a satisfaction of the notice of assessment in recordable form in accordance with Section 9.1.

9.13. Capital Contribution. Notwithstanding any provision contained herein or in any other document or instrument to the contrary, every Owner (other than a successor Declarant) who purchases a Lot from Declarant shall pay to the Association at the time of the closing of such purchase a non-refundable capital contribution fee in the amount equal to one sixth of the Annual Assessment applicable to the Lot/Townhome Lot purchased by such Owner, which amount may be held by the Association in reserve for maintenance, repair, construction and replacement of capital assets and improvements to the Common Area and to the exterior of the dwellings on the Townhome Lots. It is expressly provided herein that such capital contributions shall not be held in reserve for the benefit of the Owner paying such amount at closing, shall not be required to be held in an interest bearing account, and may be commingled by the Association with its other reserve funds, and shall not reduce an Owner's obligation to pay Annual



Assessments, inclusive of Townhome Lot maintenance assessments, or Special Assessments. The Board may adjust the amount of the capital contribution fees from time to time.

9.14. Reserves for Stormwater Repair and Reconstruction. The budget of the Association shall at all times contain a line item for routine maintenance of any stormwater detention or retention facility located on the Common Area and a separate line for the repair and reconstruction of such stormwater facilities.

9.15. Exempt Property. "Exempt Property" is defined as all portions of the Property included within any of the following categories:

(1) Common Area;

(2) Portions of the Property owned by, or dedicated, conveyed, or granted to and accepted by, the Town or a utility for a public purpose or in connection with the provision of utility services, including property within the right-of-way of publicly-dedicated streets and roads; and

(3) A portion of the Property that is used for public education and instruction and owned by a charitable or nonprofit organization exempt from taxation by the laws of the State of North Carolina or any other governmental entity or agency.

Except as otherwise provided in this paragraph, Exempt Property shall not be subject to the assessments under the Declaration. Provided, however: (i) Exempt Property under the foregoing subsection (2) on which a dwelling unit is located is subject to the assessments under the Declaration; (ii) Exempt Property under the foregoing subsection (3) on which a dwelling unit is located is subject to the assessments under the Declaration; or (iii) unless a portion of the Property otherwise qualifies as Exempt Property, a Lot on which an easement dedicated, granted, or conveyed to the Town or a utility is located, is not exempt from assessments. The Owner of any Exempt Property that is not subject to assessments shall have no membership or voting rights in the Association associated with the ownership of such Exempt Property.

Unless and until such time, if any, as it loses its exempt status, all Exempt Property owned by, or subject to an easement to, the Town or a utility provider, including all Exempt Property within publicly-dedicated street rights-of-way, and all Exempt Property owned by a charitable or nonprofit organization exempt from taxation by the laws of the State of North Carolina and used for public education and instruction are exempt from all of the provisions of the Declaration, except for any easements over such Exempt Property reserved in the Declaration by or for the Declarant, the Association, the Town or any other Person, and except for all rights and benefits accruing to such Exempt Property under the Declaration and zoning conditions of the Property, including, without limitation, the rights and benefits to use the open space and tree conservation areas within the Property.

Exempt Property that loses its status as exempt (e.g., property within a publicly-dedicated street right-of-way that has been closed as a public street or property formerly owned by the Town or a tax-exempt charitable or nonprofit organization for public education and instruction which has been conveyed to a Person whose status does not qualify for the exemption) shall be classified either as a Lot or Common Area as determined in the reasonable discretion of the Declarant, during the period of Declarant control, and thereafter by the Board, and shall be subject to all of the terms and provisions of the Declaration in the same manner and to the same extent as other Lots and Common Area.

9.16. Surplus Funds



The Association shall not be obligated to spend in any year all the Assessments and other sums received by it in such year, and may carry forward as surplus any balances remaining. The Association shall not be obligated to reduce the amount of the Annual Assessment in the succeeding year if a surplus exists from a prior year, and the Association may carry forward from year to year such surplus as the Board in its discretion may determine to be desirable for the greater financial security of the Association and the accomplishment of its purposes.

ARTICLE 10 INSURANCE

10.01. Insurance Requirements under the Act. Section 47F-3-113 of the Act requires certain insurance to be carried by the Association and provides for the distribution of insurance proceeds, requires certain provisions for property and liability insurance and governs repairs made with insurance proceeds. In the event the insurance requirements of this Article 10 conflict with, or fail to incorporate, the provisions of Sections 47F-3-113 of the Act, the provisions of the Act shall apply and govern. The establishment of an amount of insurance greater than required by the Act is not a conflict.

10.02. By Owners. Each Owner shall procure and maintain fire and extended coverage insurance as follows:

(a) Coverage. Each Lot and improvements upon a Lot shall be insured in an amount equal to one hundred percent (100%) insurable replacement value. Such coverage shall provide protection against:

- (i) Loss or damage by fire and other hazards, including extended coverage, vandalism and malicious mischief;
- (ii) Such other risks as from time to time shall be customarily covered with respect to buildings on the land; and
- (iii) Such policies shall contain clauses providing form waiver of subrogation.

(b) Liability. Public liability insurance shall be secured by each Owner with limits of liability of no less than Three Hundred Thousand and No/100 Dollars (\$300,000.00) per occurrence.

All such policies shall name the Declarant and the Association as additional insureds as their interests appear and copies of said policies and renewals thereof shall be furnished to the Declarant and the Association. Upon failure by any Owner to promptly obtain the required coverage, naming the Declarant and the Association as additional insureds, or to pay the premiums due on such policy, the Association may, but is not required to, obtain the required coverage, naming the Declarant and the Association as additional insureds, and add the cost of the premium and all other costs of obtaining such coverage to the annual assessment against the subject Lot. Such cost shall be due and payable on or before the first day of the calendar month following payment of same by the Association.

Owners may, at their option, obtain insurance coverage at their own expense upon their own personal property and for their personal liability and living expense and such other coverage as they may desire.

10.03. By Association. The Association shall procure and maintain insurance coverage as follows:



(a) Common Areas. All insurance policies upon the Common Area shall be purchased by the Association for the benefit of all the Association and the Owners and their mortgagees as their interest may appear, and provisions shall be made for the issuance of mortgagee endorsements to the mortgagees of Owners.

(b) Coverage. All buildings and improvements upon the Common Area and all personal property of the Association included in the Common Areas or otherwise owned by the Association shall be insured in an amount equal to one hundred percent (100%) insurable replacement value as determined annually by the Association with the assistance of the insurance company providing coverage. Such coverage shall provide protection against:

- (i) Loss or damage by fire and other hazards, including extended coverage, vandalism and malicious mischief;
- (ii) Such other risks as from time to time shall be customarily covered with respect to buildings on the land; and
- (iii) Such policies shall contain clauses providing form waiver of subrogation.

(c) Liability. Public liability insurance (including contractual liability coverage) shall be secured by the Association with limits of liability of no less than One Million and No/100 Dollars (\$1,000,000.00) per occurrence and Two Million and No/100 Dollars (\$2,000,000.00) aggregate for bodily injury and property damage, including loss of use, and shall include an endorsement to cover liability of the Owners as a group to a single Owner. If necessary, Workers' Compensation and Employer's Liability insurance shall be secured by the Association so as to comply with the laws and regulations of the State of North Carolina. There shall also be obtained such other insurance coverage as the Association shall determine from time to time to be desirable and necessary, including, but not limited to, directors and officers errors and omissions insurance coverage. The Association shall cause Declarant to be named as additional insureds on the above-referenced insurance policies.

(d) Premiums. Premiums for insurance policies purchased by the Association shall be paid by the Association as a Common Expense and shall be included as part of the annual assessment described in Article 9 above.

(e) Proceeds. All insurance policies purchased by the Association shall be for the benefit of the Association and the Owners and their mortgagees, as their interests may appear, and shall provide that all proceeds thereof shall be payable to the Insurance Trustee under this Declaration. The sole duty of the Insurance Trustee shall be to receive such proceeds as are paid and to hold the same in trust for the purpose stated herein or stated in the Bylaws and for the benefit of the Owners and their mortgagees in the following shares:

- (i) Proceeds on account of damage to Common Areas are to be held for the Association.
- (ii) If applicable due to insured casualty occurring on the Common Area, proceeds on account of damage to Lots shall be held in undivided shares for the Owners of damaged Lots in proportion to the cost of repairing the damage suffered by each Owner, which cost shall be determined by the Association.



(iii) In the event a mortgagee endorsement has been issued for any Lot, the share of the Owners shall be held in trust for the mortgagee and the Owners as their interests may appear.

(f) Subrogation. Each insurer shall waive its right to subrogation under any policy maintained pursuant to this Section 10.03 against any Owner or member of Owner's household.

(g) Act or Omission of Owner. No act or omission of any Owner, unless such Owner is acting within the scope of the Owner's authority on behalf of the Association, will preclude recovery under any of the policies maintained pursuant to this Section 10.03.

(h) Other Insurance. If, at the time of a loss, there is other insurance in the name of an Owner covering the same risk covered by the Association's policy, the Association's policy shall provide primary insurance.

(i) Issuance of Certificates; Cancellation. Any insurer that has issued an insurance policy under this Section shall issue certificates or memoranda of insurance to the Association and, upon written request, to any Owner or Mortgagee. Any insurer issuing an insurance policy under this Section 10.03 may not cancel or refuse to renew the policy until thirty (30) days after notice of the proposed cancellation or non renewal has been mailed to the Association, each Owner and each Mortgagee to whom certificates or memoranda of insurance have been issued at their respective last known addresses.

10.04. Distribution of Insurance Proceeds. Proceeds of insurance policies received by the Insurance Trustee shall be distributed in the following manner:

(a) Expense of the Trust. All expenses of the Insurance Trustee shall be first paid or provisions made therefore.

(b) Reconstruction or Repair. The remaining proceeds shall be paid to defray the cost of repairs to the Common Area and, if applicable due to insured casualty occurring on the Common Area, proceeds on account of damage to Lots shall be paid to defray the cost of repair to the Lots. Any proceeds remaining after defraying such costs shall be distributed to the beneficial Owners as provided in Section 10.03(e)(ii).

10.05. Fidelity Insurance or Bond. All persons responsible for or authorized to expend funds or otherwise deal in the assets of the Association or those held in trust, shall first be bonded by a fidelity insurer to indemnify the Association for any loss or default in the performance of their duties in an amount equal to six (6) months' assessments, plus reserves accumulated.

10.06. Obligation to Rebuild. Any portion of the Property for which insurance is required under Section 10.02 shall be promptly and diligently repaired, replaced, and restored by the Owner thereof, unless (i) this Declaration is terminated, or (ii) repair or replacement would be illegal under any state or local health or safety statute or ordinance.

Any portion of the Property for which insurance is required under Section 10.03 of this Article which is damaged or destroyed shall be repaired or replaced promptly by the Association unless (i) this Declaration is terminated, (ii) repair or replacement would be illegal under any state or local health or safety statute or ordinance, or (iii) the Owners decide not to rebuild by an eighty percent (80%) vote of the Voting Power of the Association (excepting private streets which are required to be repaired under applicable provisions of the Town Code). The cost of repair or replacement in excess of insurance proceeds and reserves is a common expense, and the cost thereof may be recovered by one or more Special Assessments levied by the Board equally against all Owners. If any portion of the Common Area is not repaired or replaced, (i) the insurance proceeds attributable to the damaged Common Areas shall be



used to restore the damaged area to a condition compatible with the remainder of the Property and (ii) the remainder of the proceeds shall be distributed to all the Owners or lien holders, as their interests may appear, in proportion to the Common Area liabilities of all the Lots.

**ARTICLE 11
DAMAGE AND DESTRUCTION**

11.01. Damage to Lots. Restoration and repair of damage to any Lot (including, in accordance with the definition of "Lot," the improvements thereon) shall be made by and at the expense of the Owner thereof.

11.02. Damage to Common Area. Restoration and repair of damage to any Common Area shall be made at the expense of the Association unless, under the provisions of Section 47F-3-113(g), the repair or restoration is not required to be effected, provided that the improvement is not otherwise required by the Town. If the work is to be accomplished, the Association shall promptly contract for the repair, restoration or reconstruction and, if necessary, collect from the Insurance Trustee any proceeds of insurance as received in accordance with Section 10.03. The difference, if any, between the insurance proceeds payable by reason of such repairs and the cost thereof may be recovered by one or more Special Assessments levied by the Board equally against all Owners.

Funds collected and held by the Insurance Trustee shall be disbursed by the Insurance Trustee for the purpose of repair, restoration or reconstruction in accordance with the terms and conditions of repair or reconstruction contract(s) between the Association and Persons engaged to perform the work. Funds from any special assessment shall be delivered to and held in trust by the Insurance Trustee and shall be held and disbursed for repair, restoration and reconstruction in the same manner as insurance proceeds. The Insurance Trustee may invest and reinvest funds held by it in a manner consistent with its duties as trustee. The Insurance Trustee shall be entitled to a reasonable fee for its services.

**ARTICLE 12
EMINENT DOMAIN**

12.01. Eminent Domain. Notwithstanding any provision contained herein to the contrary, in the event of a taking of all or any portion of a Lot or all any portion of the Common Area by eminent domain, or by conveyance in lieu thereof, the awards paid on account thereof shall be applied in accordance with Section 47F-1-107 of the Act. If all or any portion of the Common Area is taken by action in eminent domain (hereinafter called a "taking"), the Association shall give written notice of the proceedings to all Owners and Mortgagees, and the condemnation award shall be fairly and equitably apportioned among the Owners, Mortgagees and the Association as provided in the Act.

12.02. Repair, Restoration, Reconstruction. If only a portion of a Common Area facility is taken, the Board shall promptly contract for the repair, restoration or reconstruction of the Common Area facility to a complete architectural unit, to the extent such repair, restoration and reconstruction is reasonably necessary and practical. If the cost of repair, restoration and reconstruction of the Common Area exceeds the amount awarded by the court for such purposes, the difference may be recovered by a special assessment levied equally against all Owners.

**ARTICLE 13
ARCHITECTURAL CONTROL**

13.01. Architectural Control. No building, swimming pool, spa, statuary, flag pole, mailbox, basketball goal or other sports equipment (permanent or portable), fence, wall, gazebo, or any other



structure or improvement shall be placed, erected, commenced, constructed, demolished, rebuilt or altered upon any Lot or attached or affixed to any improvement upon any Lot or upon the Common Area nor shall any exterior addition to or change or alteration of a residence building be made, including, but not limited to, additions or alterations to any deck, fence, wall, driveway, or patio, plating or clearing and cutting of trees, color or painting of the exterior (other than maintenance to and touch-up painting to preserve the original exterior paint) or change of the type of exterior finish, the installation of aerials, satellite dishes, flags or awnings or the addition of any exterior attachment (such as a storm door) until an application, including plans and specifications showing the nature, kind, shape, height, materials, finishes, colors and location of the same (including floor plans and elevations) (the "Plans"), shall have been submitted in triplicate to and approved in writing by the Architectural Control Committee; provided, however, that no such approval shall be required for alterations solely to the interior of any residential structure. The Board may require a reasonable fee to accompany each application for approval. **The Architectural Control Committee shall have the absolute and exclusive right to approve or disapprove Plans in its sole discretion and may approve or disapprove Plans based on purely aesthetic reasons, which in the sole discretion of the Architectural Control Committee shall be deemed sufficient. Absent an approval from the Architectural Control Committee the proposed alteration or improvement may not be commenced.** THE RESTRICTIONS HEREIN CONTAINED SHALL HAVE NO APPLICATION TO THE DEVELOPMENT, IMPROVEMENT, MAINTENANCE AND REPAIR OF THE PROPERTY BY DECLARANT OR BY THE ASSOCIATION, AND NEITHER THE BOARD NOR THE ARCHITECTURAL CONTROL COMMITTEE SHALL HAVE ANY POWER OR AUTHORITY TO REVIEW OR REQUIRE MODIFICATIONS TO THE PLANS FOR CONSTRUCTION OR INSTALLATION OF IMPROVEMENTS BY DECLARANT.

The installation of antennae and of satellite dishes or disks shall be permitted on a Lot if accomplished in strict compliance with the limitations and conditions imposed by the Telecommunications Act of 1996, as amended from time to time, but no antenna or disk which is in any dimension larger than prescribed by the Telecommunications Act of 1996 or which is not installed in accordance with the advance notice requirements and location guidelines of the Telecommunications Act of 1996 may be installed or maintained on any Lot except with the prior written approval of the Architectural Control Committee.

The installation of solar panels or other "green energy" improvements ("Green Energy Improvements") to the roof or exterior of a dwelling located on a Lot shall be permitted in accordance with NCGS §22B-20 after approval by the Architectural Control Committee. Upon any such approval for the installation of Green Energy Improvements, the Owner of such Lot, its successors and assigns, shall thereafter be responsible for the installation, maintenance and repair of the Green Energy Improvements and any and all damage caused to the dwelling on the Lot or to adjacent dwellings, if applicable, during the installation, maintenance or repair of such Green Energy Improvements, and, as a condition to such approval, Declarant and/or the Architectural Control Committee may require the Owner of the subject Lot to enter into a license or other agreement relative to same. The Association shall not be responsible for the installation, maintenance or repair of Green Energy Improvements installed by an Owner.

13.02. Architectural Control Committee.

(a) Membership: Right of Declarant to Act as ACC with Respect to Initial Construction.

(i) The Architectural Control Committee shall be composed of three (3) persons (who need not be Members of the Association) appointed by the Board. A majority of the Architectural Control Committee may designate a representative to act for it. In the event of death, resignation, or removal by the Board of any member of the ACC, the Board shall have full authority to designate a



successor. Unless otherwise approved by the Association, neither the members of the ACC nor its designated representative shall be entitled to any compensation for services performed pursuant to this Section. The Association shall keep, or cause to be kept, a list of the names and addresses of the persons who form the ACC and a list of the names and addresses of any designated representatives of the ACC, and such a list shall be available in the principal office of the Association to any Owner upon request.

(ii) Notwithstanding the foregoing, as to the initial construction of improvements on any Lot (the "Initial Construction of Improvements"), the Declarant shall serve as the Architectural Control Committee responsible for the review, approval, and monitoring of construction of improvements. Any requests for modifications or alterations of improvements in fact constructed on a Lot or for the construction of additional improvements on a Lot shall be the responsibility of the Architectural Control Committee, which need not be the Declarant if it so directs, but, if not the Declarant, Declarant shall have the right to approve or disapprove any decisions made by the ACC upon fifteen (15) days written notice to the ACC and the applicable Owner following the thirty (30) day period for the Architectural Control Committee's decision. The rights of the Declarant pursuant to this section shall cease upon the Completion of Sales. Prior to the Completion of Sales, the Declarant may at any time relinquish, either temporarily or permanently, its rights to review, approve and monitor the Initial Construction of Improvements.

(b) **Procedure.** At least sixty (60) days prior to the commencement of any construction on a Lot, the Plans for such Lot shall be submitted to the ACC. Approval shall be subject to such regulations and architectural standards as may from time to time be promulgated by the ACC. Within thirty (30) days after receipt of the Plans and any other requested information, the Architectural Control Committee shall notify the Owner of the Lot in writing as to whether the Plans have been approved. Unless a response is given by the ACC within thirty (30) days from receipt of all required information, the Plans shall be deemed approved. The response of the Architectural Control Committee may be an approval, a denial, an approval with conditions or a request for additional information. A request for additional information shall be deemed a determination that the information submitted was inadequate, and the thirty (30) day time period for further ACC response shall only commence upon receipt of the requested additional information. No construction shall be commenced until either the fifteen (15) day time period for Declarant's approval has passed or Owner has received Declarant's approval if the ACC is not the Declarant and Declarant still has the rights as outlined in 13.02(a)(ii) above. If an approval with conditions is granted and construction then begins, the conditions shall be deemed accepted by the Owner of the Lot, and the conditions imposed shall become a part of the approved Plans. No improvements shall be constructed except in strict conformity with the approved Plans. The ACC shall have the right to monitor construction of improvements and investigate compliance with the approved Plans and is hereby granted the right to enter upon any Lot in order to do so.

Any Owner who submits Plans to the ACC and disagrees with the finding of the ACC may appeal the decision to the Board by giving written notice of appeal to the President of the Association within fifteen (15) days following its receipt of notice of denial. The Board shall review the Plans and hold a meeting to hear the case with the Owner and the ACC or its representative. At such meeting the ACC or its representative shall present to the Board specific reasons why the Plans were denied, and the Owner or his agent may present information challenging the findings of the ACC. The decision of the ACC shall only be overridden by a majority vote of the Board. Notwithstanding the foregoing, an Owner shall have no right to appeal decisions by the Declarant acting as the ACC with respect to the Initial Construction of Improvements or to approvals by the ACC which are disapproved by the Declarant pursuant to Section 13.02(a)(ii).

The Association may adopt a schedule of reasonable fees for processing requests for approval. Such fees will be payable to the Association at the time that the Plans and related documents are



submitted to the ACC. The ACC shall have the right, exercisable in its sole discretion, to procure the services of a consultant of its own choosing for purposes of assisting the ACC in its review of any Plans, and the cost of such consulting service(s) shall be the responsibility of the respective applicant or Owner of the subject Lot and shall be in addition to any fees due for processing any requests for approval.

All notices required to be given under this Section 13.03(b) shall be given in writing and delivered by hand, mailed with prepaid postage or deposited with an overnight carrier (e.g. Federal Express, UPS, etc.). If the ACC denies an application, the ACC shall specify the particular grounds upon which denial of such application is based. If the ACC approves the application, one set of Plans, marked approved (or approved with specified conditions), shall be retained by the ACC, and the remaining two sets of Plans shall be returned to the applicant.

13.03. Landscape Plan; Landscaping. As part of the Plans package submitted by an Owner to the ACC for approval of the Initial Construction of Improvements or any improvements thereafter, there shall be included a comprehensive landscape plan (the "Landscape Plan"). Shown thereon, in addition to the scheme for decorative plantings, shall be all of the planned site improvements and modifications, including, but not limited to, major topographic changes and plans for revegetation and restabilization thereof, the specifications for all terraces, walkways, driveways, paths, fences, bulkheading, walls, pools, outdoor lighting and for other fixtures and structures to be constructed as part of the Landscape Plan. As contemplated by the terms of the Conditional Use Permit, **Owners are encouraged to include landscaping designs and plantings in their Landscape Plans that require no irrigation or water usage.**

The Landscape Plan shall unite the Lot as well as all other structural aspects of the landscape with its setting and shall provide for the introduction of plant materials of reasonable size and quantity to create (when first installed) a mature landscape scene.

Each Lot shall be maintained consistently with the Landscape Plan approved for it by the ACC. All material changes to the Landscape Plan or the landscaping installed on a Lot shall be first approved by the ACC. The ACC shall have the authority to create additional landscaping guidelines applicable to the Property.

13.04. Maintenance of Construction Activities. During the construction of any improvement to a Lot, the Lot, roads, landscaping and Common Areas or Limited Common Areas adjacent thereto shall be kept in a neat and orderly condition, free from any dirt, mud, garbage, trash, or other debris, so as not to cause an unsightly condition to exist or damage to occur. Any damage to the street, curb, sidewalk or to any part of any Common Areas, Limited Common Areas or utility system caused by an Owner or an Owner's builder shall be repaired by such Owner. Owners and their agents and employees shall adhere to the construction standards promulgated from time to time by the Association.

In the event the Owner or his agent, employee or contractor shall fail to maintain the Lot and adjoining areas, as specified herein, or damage occurs and such failure continues or damage remains unrepaired for seven (7) days following delivery of written notice thereof from Declarant or the Association, Declarant or the Association shall have the right, exercisable in its sole discretion, to summarily abate any unsightly conditions, make needed repairs, and to remove any rubbish, refuse, unsightly debris and/or growths from the Lot and adjoining area. In the event the Declarant or the Association, after such notice, causes the subject work to be done, the costs of such shall be reimbursed by the Owner to the Association and will become a continuing lien on the Lot until paid.

13.05. Timely Completion. When construction of any Lot, structure, improvement, or addition thereto has begun, work thereon shall be prosecuted diligently and continuously until the full completion thereof. It is a requirement that Lots under construction in the Property be "dried-in" with exterior



finishes installed (roofing, windows and finish siding and trim in place) within one hundred twenty (120) days of the commencement of construction and that all phases of work, including execution of the Landscape Plan, be complete within six (6) months of the date of ACC approval. In the event that completion is delayed beyond one year from the date of ACC approval and provided the Owner is notified within thirty (30) days of the expiration of the one year construction period, the ACC may, upon unanimous vote of the committee, rescind the original approval and require that the Owner resubmit Plans for approval.

13.06. Reconstruction of Residences. In the event of damage or destruction to a residence by fire or other casualty, the Owner shall within four (4) months diligently commence to reconstruct such residence as soon as reasonably possible and substantially in accordance with the original plans; provided, however, that such residence shall be restored so that the exterior appearances thereof substantially resemble their appearances in form and in color prior to such damage or destruction. Notwithstanding the foregoing, however, any Owner of a damaged residence may request permission from the ACC to reconstruct or repair his or her residence in accordance with revisions in the Plans. The ACC shall grant such requests only in the event that the proposed change or deviation will materially benefit and enhance the entire Property in a manner generally consistent with the plan and development thereof.

13.07. Limitation of Liability. Review and approval of any application pursuant to this Article 13 is made on the basis of aesthetic considerations only and the ACC 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. Neither the Declarant, the Association, the Board, the ACC, or member of any of the foregoing shall be held liable for any injury, damages, or loss arising out of the manner or quality of approved construction or modifications to any Lot.

13.08. Enforcement. Any construction, alteration, or other work done in violation of this Article 13 shall be deemed to be nonconforming. Upon written request from the Board, the ACC or the Declarant, Owners shall, at their own cost and expense, remove such construction, alteration, or other work and shall restore the land to substantially the same condition as existed prior to the construction, alteration, or other work. Should an Owner fail to remove and restore as required hereunder, the Board or its designees shall have the right to enter the property, remove the violation, and restore the property to substantially the same condition as existed prior to the construction, alteration or other work. All costs, together with the interest at the maximum rate then allowed by law, may be assessed against the nonconforming Lot and collected as a special assessment pursuant to Section 9.07 hereof.

Any contractor, subcontractor, agent, employee, or other permittee of an Owner who fails to comply with the terms and provisions of this Article may be excluded by the Board from the Property. In such event, neither the Association, its officers, or directors shall be held liable to any person for exercising the rights granted by this Section 13.08.

In addition to the foregoing, the Board shall have the authority and standing, on behalf of the Association, to pursue all legal and equitable remedies available to enforce the provisions of this Article 13 and the decisions of the ACC.

ARTICLE 14 MORTGAGEE PROTECTION

14.01. Interpretation. In the event any provision of this Article 14 is inconsistent with or contrary to any other provision of this Declaration, the provisions of this Article 14 shall control.



14.02. Notices. Any Mortgagee of any Lot, by written notice to the Association setting forth the Lot encumbered, the Owner thereof and the address to which notices may be sent, may request and thereby be entitled to receive written notice from the Association of (a) any default which is outstanding for sixty (60) days or longer by the Owner of such Lot in the performance of his or her obligations under or in compliance with the provisions of this Declaration, the Bylaws or the Rules and Regulations, (b) any substantial damage to or destruction of the Common Area, including the improvements located thereon, or, if known to the Association, any substantial damage to or destruction of a Lot, including the improvements located thereon, and (c) any proposed or threatened taking by power of eminent domain of the Common Area or any portion thereof or of any Lot or portion thereof.

14.03. Mortgagee's Right to Information. Upon written request to the Association, a Mortgagee is entitled to: (a) inspect the books and records of the Association during normal business hours; (b) receive an annual financial statement of the Association within ninety (90) days following the end of any fiscal year of the Property; and (c) receive written notice of all meetings of the Association and to designate a representative to attend all such meetings.

14.04. Damage and Destruction Rights. In the event of substantial damage to or destruction of any Lot or improvements to a Lot or any part of the Common Area no provision of any document establishing the Property shall entitle the Owner of a Lot or other party to priority over such Mortgagee with respect to the distribution to such Owner of any insurance proceeds.

14.05. Condemnation Rights. If any Lot or portion thereof or the Common Area or any portion thereof is made the subject matter of any condemnation proceedings or is otherwise sought to be acquired by a condemning authority, no provision of any document establishing the Property shall entitle the Owner of a Lot or other party to priority over such Mortgagee with respect to the distribution to such Owner of the proceeds of any award or settlement.

14.06. Right of First Refusal. Any right given by an Owner of a Lot to any third person to purchase such Lot before it is offered for sale or sold to any other person (such right commonly known as a "right of first refusal") shall not be binding upon or enforceable against any Mortgagee acquiring such Lot pursuant to exercise of remedies provided for in the Mortgage, including foreclosure by judicial action or exercise of a power of sale, or by acceptance of a deed or assignment in lieu of foreclosure.

14.07. Subordination. No provisions contained in this Declaration shall defeat or render invalid the lien of any Mortgage which is made in good faith and for value. The lien of the assessments provided for herein shall be subordinate to the lien of any Mortgage recorded prior to the date any such assessment becomes due. This subordination shall apply only to assessments on a Lot which have become due and payable prior to a sale or transfer of such Lot pursuant to a decree of foreclosure or exercise of power of sale. Any Mortgagee who acquires title to or comes into possession of a Lot pursuant to exercise of remedies provided for in the Mortgage, including foreclosure by judicial action or exercise of a power of sale, and any purchaser at a foreclosure sale, shall take the Lot free of any claims for unpaid assessments or charges against the Lot which have accrued prior to the time such Mortgagee or purchaser acquires title to or comes into possession of the Lot; provided, however, this exception shall not be applicable to any claim for assessments or charges levied by the Association against all Lots for the purpose of recovering any revenue lost by reason of the nonpayment of past due assessments upon such Lot; and provided further, that except as otherwise provided in this Section, all of the limitations, restrictions, covenants, conditions, easements, liens, charges, assessments, and equitable servitudes contained herein shall be binding upon any Owner whose title is derived through foreclosure sale, trustee's sale or otherwise. Except as provided above, the sale, transfer or conveyance of title to a Lot shall not relieve a selling Owner from personal liability for any assessments which became due and payable prior to such sale,



transfer or conveyance, nor relieve such Lot from a duly recorded lien for any such prior unpaid assessment.

14.08. Payments by Mortgagees. Any Mortgagee, after at least ten (10) days' prior written notification to the Association of the items to be paid and the failure of the Association within such time to make payment, may pay, alone or in conjunction with other Mortgagees, delinquent taxes, liens or assessments which may be or become a charge against the Common Area, or any portion thereof, and any overdue premiums on policies of fire and extended coverage insurance for the Common Area and in the event of a lapse of such a policy of insurance, may pay premiums to secure a new policy. In the event such payments are made, the Mortgagee making such payment shall be entitled to immediate reimbursement from the Association to the extent of the payment made.

14.09. Consent of Mortgagee. With respect to any provision in this Declaration requiring the consent or written approval of a Mortgagee, any Mortgagee who does not respond within thirty (30) days' request by the Association for such consent or written approval shall be deemed to have approved such request.

ARTICLE 15 ANNEXATION

15.01. Right to Annex. Declarant shall have the right to annex to Ballentine subdivision, thereby bringing within the scheme of this Declaration and subject to the jurisdiction of the Association, part or all of the Additional Land, if any. Annexation of any real property other than Declarant's annexation of the Additional Land shall require the vote or written consent of not less than sixty seven percent (67%) of the Voting Power of the Association. Annexation of additional property may be accomplished in Phases.

15.02. Procedure for Annexation. Any annexation shall be made by recordation of a Supplemental Declaration covering the real property to be annexed. The Supplemental Declaration shall describe the real property to be annexed and state that annexation is being made pursuant to this Declaration for the purpose of extending the jurisdiction of the Association to cover the property described therein. The Supplemental Declaration may contain such complementary additions and modifications to the terms of this Declaration as may be necessary or desirable to reflect the different character, if any, of the Phase being annexed and as are not inconsistent with the general scheme of this Declaration. Annexation shall be effective upon recordation of the Supplemental Declaration and thereupon the real property described therein shall be subject to all of the provisions of this Declaration, to the extent made applicable by the Supplemental Declaration, and to the jurisdiction of the Association pursuant to the terms of this Declaration, the Articles, Bylaws and Rules and Regulations.

15.03. Annexed Property. Each Owner of a Lot in an annexed Phase automatically shall be a Member of the Association and such Owners and annexed real property shall be subject to assessment by the Association for the benefit of the Property or any part thereof. Assessments of Lots in an annexed Phase shall commence upon the last to occur of: (a) commencement of Annual Assessments for the Property, and (b) the first day of the month next following the first conveyance of a Lot in such Phase to a purchaser, as provided in Section 9.09. The Association shall have the duties, responsibilities and powers set forth in this Declaration, the Articles and Bylaws with respect to annexed real property. Except as may otherwise be expressly provided in this Declaration or any Supplemental Declaration, the Property shall be managed and governed by the Association as an entirety. Assessments collected from Owners in the Property may be expended by the Association anywhere in the Property without regard to the particular Phase, area or subdivision from which such assessments came. All Owners shall have ingress and egress to and from all the Common Area throughout the Property and any Phase thereof and shall



have use and enjoyment of any Common Area facilities and other amenities contained within the Common Area throughout the Property, provided that any such use shall be subject to the provisions of this Declaration, any Supplemental Declaration, the Bylaws and the Rules and Regulations.

15.04. All Common Areas and Limited Common Areas within lands annexed to the Property shall be conveyed to the Association in accordance with Section 4.01

**ARTICLE 16
INDEMNIFICATION OF OFFICERS AND DIRECTORS**

The Association shall indemnify any and all persons who may serve or whom have served at any time as directors or officers of the Association against any and all expenses, including amounts paid upon judgments, counsel fees and amounts paid in settlement (before or after suit is commenced), actually and necessarily incurred by such persons in connection with the defense or settlement of any claim, action, suit or proceeding in which they, or any of them, are made parties, or a party, which may be asserted against them or any of them, by reason of being or having been directors or officers or a director or an officer of the Association, except in relation to matters as to which any such director or officer or former director or officer or person shall be adjudged in any action, suit, or proceeding guilty of willful and intentional negligence or misconduct in the performance of his or her duties to the Association. Provided, however, that in the event of a settlement, the indemnification herein shall apply only when the Board of Directors approves such settlement and reimbursement as being in the best interest of the Association.

The provisions hereof shall be in addition to and not exclusive of any and all other rights to which any director or officer may otherwise be entitled under any law, Bylaw, agreement, vote of Association Members or otherwise. In the event of death of any officer or director, the provisions hereof shall extend to such person's legal heirs, representatives, successors and assigns. The foregoing rights shall be available whether or not such person or persons were in fact directors or officers at the time of incurring or becoming subject to such expenses, and whether or not the proceeding, claim, suit or action is based on matters which antedate the adoption of this Declaration.

**ARTICLE 17
EXCULPATION**

It is expressly understood and agreed that nothing contained in this Declaration shall be interpreted or construed as creating any liability whatsoever, directly or indirectly, against Declarant or any of its officers, members, managers, employees, agents, attorneys, heirs, executors, legal representatives, successors or assigns (collectively, the "Declarant Related Parties") for monetary relief or damages. In particular, and without limiting the generality of the foregoing, if any proceeding shall be brought to enforce the provisions of this Declaration, the party instituting such proceeding shall not be entitled to take any action to procure any money judgment against any of the Declarant Related Parties.



**ARTICLE 18
MISCELLANEOUS PROVISIONS**

18.01. Conflict with the Act; Conflict with Town Code; Severability. Should any of the terms, conditions, provisions, paragraphs, or clauses of this Declaration conflict with any provisions of the Act, the provisions of the Act shall control unless the Act permits the Declaration to override the Act in which event the Declaration shall control. Should any of the terms, conditions, provisions, paragraphs, or clauses of this Declaration conflict with any provisions of the Town Code, the provisions of the Town Code shall control unless the Town Code permits the Declaration to override the Town Code in which event the Declaration shall control. The invalidity of any covenant, restriction, condition, limitation, provision, paragraph or clause of this Declaration, or any part of the same, or the application thereof to any person or circumstance, shall not impair or affect in any manner the validity, enforceability or affect of the rest of this Declaration, or the application of any such covenant, restriction, condition, limitation, provision, paragraph or clause to any other person or circumstance.

18.02. Interpretation of Declaration. Whenever appropriate, singular may be read as plural, plural may be read as singular, and the masculine gender may be read as the feminine or neuter gender. Compound words beginning with the prefix "here" shall refer to this entire Declaration and not merely the part in which they appear.

18.03. Law Controlling. This Declaration shall be construed and controlled by and under the laws of the State of North Carolina.

18.04. Power to Settle Claims. The Board shall have the power and authority to compromise, settle, release and otherwise adjust claims, demands, causes of action and liabilities in favor of the Association and the Owners, on behalf of the Association and Owners, as the case may be, provided any such claim, demand, cause of action or liability arises out of or relates to a condition or defect common to all or a majority of the Lots or improvements constructed thereon, or to the development, design, construction, condition, repair or maintenance of or damage or injury to or defect in the Common Area or part thereof, and the Association shall have the right and the power to make and receive all payments or other consideration necessary therefor or in connection therewith. For such purposes, the Board shall be, and hereby is, irrevocably appointed attorney in fact to act on behalf of all Owners upon such terms and conditions and for such consideration as may be approved by a majority of the Board.

18.05. Independence of Provisions. The provisions of this Declaration shall be deemed independent and severable. Invalidation or partial invalidation of any provision of this Declaration by judgment or court order shall not affect any other provision of this Declaration, and the remaining provisions shall remain in full force and effect.

18.06. Notices. Notices shall be in writing and shall be addressed as follows: (a) if to an Owner, to the address of his or her Lot as listed in the County Tax Office; (b) if to Declarant, to 1511 Sunday Drive, Suite 100, Raleigh, Wake County, North Carolina 27607; and (c) if to the Association, to 1511 Sunday Drive, Suite 100, Raleigh, Wake County, North Carolina 27607. The Association may designate a different address for notices by giving written notice of such change of address to all Owners and to Declarant. Declarant may designate a different address for notices by giving written notice of such change of address to all Owners and to the Association. Any Owner may designate a different address for notices by giving written notice of such change of address to the Association and to Declarant.

18.07. Headings. The headings used in this Declaration are for convenience and reference only and the words contained therein shall not be held to expand, modify, or aid in the interpretation, construction, or meaning of this Declaration.



18.08. Enforcement. The failure of any Owner to comply with the provisions of this Declaration, the Bylaws, the Articles or the Rules and Regulations shall entitle the Association, any Owner, or any of them, to maintain an action for the recovery of damages or injunctive relief or both, and such persons or entities, or any of them, shall have the right to enforce all limitations, restrictions, covenants, conditions, easements, liens, charges, assessments and equitable servitudes imposed by or pursuant to the provisions of this Declaration. Failure to enforce the provisions of this Declaration shall not be deemed a waiver of the right to do so thereafter. All remedies provided in this Declaration shall be cumulative and in addition to any other remedies available under law.

18.09. Equal Opportunity Housing. This Property provides equal opportunity housing. Each Lot sold shall be sold without regard to the race, creed, color, national origin, ancestry, religion, marital status, familial status, handicap, age or sex of the purchaser.

18.10. Amendments.

(a) Except as otherwise expressly provided herein, this Declaration may be amended only in strict compliance with the Act, including, without limitation, Section 47F-2-117 of the Act, except that no Amendment altering or impairing Special Declarant Rights may be made without the written consent of the Declarant.

This Declaration may be amended or modified at any time by the vote or written consent of sixty-seven percent (67%) of the Voting Power of the Association. Provided, however, that if the percentage of the Voting Power necessary to amend a specific provision of this Declaration shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that provision. Further provided, that any amendment or modification to this Declaration must be consented to by Declarant so long as Declarant is the Owner of any Lot or other portion of the Property, which consent Declarant may grant or withhold in its sole discretion. Any amendment or modification upon which the vote of Owners is required pursuant to this Section 18.10 shall become effective when an instrument executed by the Owners voting for such amendment or modification is filed of record in the Office of the Register of Deeds of Orange County, North Carolina; provided, however, such an amendment or modification, in lieu of being executed by the Owners voting for such amendment or modification, may contain a certification of the Secretary of the Association stating that the amendment or modification has been voted on and approved by the requisite number of votes of the Owners, as provided in this Section 18.10.

Notwithstanding the terms of the immediately preceding paragraph of this Section 18.10, during the period of Declarant control, Declarant, without obtaining the approval of any Owner or Owners other than Declarant, shall have the unilateral right, in its sole and absolute discretion, to make any amendments or modifications hereto which Declarant deems necessary or desirable, including, without limitation, amendments or modifications to any procedural, administrative or substantive provisions of this Declaration.

(b) Any action to challenge the validity of an amendment adopted under Section 18.10(a) must be brought within one (1) year of the amendment's effective date. No action to challenge any such amendment may be brought after such time.

18.11. Release of Property. Declarant shall have the right, in its sole and absolute discretion, without the consent of the Association or any other Owner, to release any portion of the Property then owned by Declarant from the terms of this Declaration by recording a release in the Office of the Register



of Deeds of Orange County, North Carolina. After the recordation of such release, the portion of the Property described therein shall not be subject to the terms of this Declaration.

**ARTICLE 19
STORMWATER FACILITY MAINTENANCE**

19.01. Stormwater Facilities. In accordance with the requirements of the Town one or more detention basins, with associated inlets, junction boxes, etc. will be located on a portion of the Common Area. The operation and maintenance of the Stormwater Facilities are subject to the terms of the Stormwater Facility Agreements and Stormwater Maintenance Manuals. Upon conveyance of the Common Area to the Association, the Association shall operate and maintain the Stormwater Facilities.

19.02. Expenditure Priority. To the extent not inconsistent with other applicable Legal Requirements, the Association's obligations under the Stormwater Facility Agreements shall receive the highest priority for expenditures with the exception of expenditures for (i) assessments levied by the local governmental authorities (ii) ad valorem property taxes (iii) liability and hazard insurance required to be maintained by the Association (iv) any other expenditures which are required by law to have a higher priority.

19.03. Reconstruction and Repair Fund. The Association shall maintain a fund for the reconstruction and repair of the Stormwater Facilities. The reconstruction and repair fund shall contain the dollar amount reasonably determined from time to time by the Board to be adequate to pay for the probable reconstruction and repair cost of the Stormwater Facilities. The reconstruction and repair fund shall be listed as a separate line in the Association's budget and shall be kept in an account insured by the Federal Deposit Insurance Corporation or by another entity acceptable to the Board. The funds in the reconstruction and repair account shall not be commingled with any of the Association's other funds. The Association shall submit an report to the Town certifying that the funds have been set aside.

19.04. Special Assessments. The Association shall charge Annual and/or Special Assessments, if necessary, to meet the Association's obligations under the Stormwater Facility Agreements and Stormwater Maintenance Manuals.

19.05. Dissolution and Transfer. Notwithstanding any provision to the contrary contained in the Declaration and to the extent permitted by applicable law, the Association shall not enter into voluntary dissolution unless the Stormwater Facilities are transferred to a person or entity who assumes the maintenance obligation of the Stormwater Facilities as set forth in the Stormwater Facility Agreements and the Stormwater Maintenance Manuals, and that to the extent permitted by applicable law, the Association shall not sell, convey or otherwise transfer any interest in the Common Area on which the Stormwater Facilities are located to any party until the intended assumes the maintenance obligation of the Stormwater Facilities as set forth in the Stormwater Facility Agreements and the Stormwater Maintenance Manuals.

19.06. Easement to the Town. Declarant hereby grants to the Town an easement for ingress, egress and regress over and across the Common Area on which the Stormwater Facilities exist for the purpose of inspecting the Stormwater Facilities and for the purpose of correcting, repairing, replacing, and maintaining the Stormwater Facilities and exercising the other rights of the Town that are provided for by the Stormwater Facility Agreements and the Stormwater Maintenance Manuals.



IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has executed this Declaration as of the date first above set forth.

DECLARANT

**MI Homes of Raleigh, LLC,
a Delaware limited liability company**

By: *Edmund*
Name: Edward F. Kristensen
Title: Area President

Durham County, North Carolina

December 1, 2011

I certify that the following person personally appeared before me this day and acknowledged to me that he or she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated: Edward F. Kristensen.

My Commission Expires:
May 19th, 2014

Reyna P. Estrada
Notary Public
Print Name: Reyna P. Estrada

[Affix Notary Stamp or Seal]

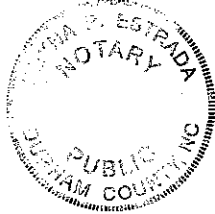




EXHIBIT A

Property

BEING all of those certain tracts or parcels of land designated as Lots 1-44, Private Open Space #3, Private Open Space #4, Private Open Space #5, and Recreation Area #1, as shown on plat of survey entitled "Ballentine, Phase 2 – Single Family Subdivision Plat, Town of Carrboro, Chapel Hill Township, Orange County, North Carolina," dated January 26, 2011, prepared by Ronald T. Frederick, Professional Land Surveyor, of The John R. McAdams Company, Inc. and recorded in Book of Maps 108, Page 122-125, Orange County Registry, which plat is referenced for a more particular description.

AND BEING all of those certain tracts or parcels of land designated as Lots 1-34, inclusive, Private Open Space #1, Private Open Space #2, and Private Recreation Space, as shown on plat of survey entitled "Ballentine, Phase 1 – Townhome Subdivision Plat, Town of Carrboro, Chapel Hill Township, Orange County, North Carolina," dated November 22, 2011, prepared by Ronald T. Frederick, Professional Land Surveyor, of The John R. McAdams Company, Inc. and recorded in Book of Maps 108, Page 57-61, Orange County Registry, and revised in plat recorded in Book of Maps 108, Page 150-151, Orange County Registry, which plats are referenced for a more particular description.

Exhibit A-1



PIN: 9860-93-4303	-Parent	DESC: E/S SR 1009
PIN: 9860-93-4362		DESC: E/S SR 1009
PIN: 9860-93-9313		DESC: 1 PH 2 BALLENTINE P 108 122-125
PIN: 9860-93-8278		DESC: 2 PH 2 BALLENTINE P 108 122-125
PIN: 9860-93-8251		DESC: 3 PH 2 BALLENTINE P 108 122-125
PIN: 9860-93-7362		DESC: 4 PH 2 BALLENTINE P 108 122-125
PIN: 9860-93-6382		DESC: 5 PH 2 BALLENTINE P 108 122-125
PIN: 9860-93-6323		DESC: 6 PH 2 BALLENTINE P 108 122-125
PIN: 9860-93-5364		DESC: 7 PH 2 BALLENTINE P 108 122-125
PIN: 9860-93-5304		DESC: 8 PH 2 BALLENTINE P 108 122-125
PIN: 9860-93-4324		DESC: 9 PH 2 BALLENTINE P 108 122-125
PIN: 9860-93-2296		DESC: 10 PH 2 BALLENTINE P 108 122-125
PIN: 9860-93-2280		DESC: 11 PH 2 BALLENTINE P 108 122-125
PIN: 9860-93-2174		DESC: 12 PH 2 BALLENTINE P 108 122-125
PIN: 9860-93-2078		DESC: 13 PH 2 BALLENTINE P 108 122-125
PIN: 9860-93-2062		DESC: 14 PH 2 BALLENTINE P 108 122-125
PIN: 9860-92-2956		DESC: 15 PH 2 BALLENTINE P 108 122-125



PIN: 9860-82-2950	DESC: 16 PH 2 BALLENTINE P 108 122-125
PIN: 9860-82-2844	DESC: 17 PH 2 BALLENTINE P 108 122-125
PIN: 9860-82-2737	DESC: 18 PH 2 BALLENTINE P 108 122-125
PIN: 9860-82-2740	DESC: 19 PH 2 BALLENTINE P 108 122-125
PIN: 9860-82-2685	DESC: 20 PH 2 BALLENTINE P 108 122-125
PIN: 9860-82-3666	DESC: 21 PH 2 BALLENTINE P 108 122-125
PIN: 9860-82-4616	DESC: 22 PH 2 BALLENTINE P 108 122-125
PIN: 9860-82-4758	DESC: 23 PH 2 BALLENTINE P 108 122-125
PIN: 9860-82-5811	DESC: 24 PH 2 BALLENTINE P 108 122-125
PIN: 9860-82-5864	DESC: 25 PH 2 BALLENTINE P 108 122-125
PIN: 9860-82-6817	DESC: 26 PH 2 BALLENTINE P 108 122-125
PIN: 9860-82-6960	DESC: 27 PH 2 BALLENTINE P 108 122-125
PIN: 9860-82-7913	DESC: 28 PH 2 BALLENTINE P 108 122-125
PIN: 9860-82-7976	DESC: 29 PH 2 BALLENTINE P 108 122-125
PIN: 9860-83-8020	DESC: 30 PH 2 BALLENTINE P 108 122-125
PIN: 9860-83-8066	DESC: 31 PH 2 BALLENTINE P 108 122-125
PIN: 9860-83-8154	DESC: 32 PH 2 BALLENTINE P 108 122-125
PIN: 9860-83-6117	DESC: 33 PH 2 BALLENTINE P 108 122-125
PIN: 9860-83-5147	DESC: 34 PH 2 BALLENTINE P 108 122-125
PIN: 9860-83-4187	DESC: 35 PH 2 BALLENTINE P 108 122-125
PIN: 9860-83-4127	DESC: 36 PH 2 BALLENTINE P 108 122-125
PIN: 9860-83-4047	DESC: 37 PH 2 BALLENTINE P 108 122-125
PIN: 9860-83-4031	DESC: 38 PH 2 BALLENTINE P 108 122-125
PIN: 9860-82-4933	DESC: 39 PH 2 BALLENTINE P 108 122-125



PIN: 9860-82-5908	DESC: 40 PH 2 BALLENTINE P 108/122-125
PIN: 9860-83-5051	DESC: 41 PH 2 BALLENTINE P 108/122-125
PIN: 9860-83-5095	DESC: 42 PH 2 BALLENTINE P 108/122-125
PIN: 9860-83-6066	DESC: 43 PH 2 BALLENTINE P 108/122-125
PIN: 9860-83-7102	DESC: 44 PH 2 BALLENTINE P 108/122-125
PIN: 9860-83-5445	DESC: OPEN SPACE 3 PH 2 BALLENTINE 108/122-125 P
PIN: 9860-93-0263	DESC: PRV OPEN SPACE 4 PH 2 108/122-125 BALLENTINE P
PIN: 9860-82-3830	DESC: OPEN SPACE 5 PH 2 BALLENTINE 108/122-125 P
PIN: 9860-83-7119	DESC: REC AREA 1 PH 2 BALLENTINE P 108/122-125
PIN: 9860-83-7011	DESC: RDS PH 2 BALLENTINE P 108/122-125
9860-83-1253	E/S SR 1009 Public Service Camp



PIN: 9860-82-7427	DESC: 1-7 & 23-34 OPEN SPACE 1-2 BALLENTINE P108/57-61
PIN: 9860-82-4467	DESC: 1 PH1 REC BALLENTINE P 108/151
PIN: 9860-82-4488	DESC: 2 PH1 REC BALLENTINE P 108/151
PIN: 9860-82-5500	DESC: 3 PH1 REC BALLENTINE P 108/151
PIN: 9860-82-5502	DESC: 4 PH1 REC BALLENTINE P 108/151
PIN: 9860-82-5524	DESC: 5 PH1 REC BALLENTINE P 108/151
PIN: 9860-82-5535	DESC: 6 PH1 REC BALLENTINE P 108/151
PIN: 9860-82-5557	DESC: 7 PH1 REC BALLENTINE P 108/151
PIN: 9860-82-8549	DESC: 23 PH1 REC BALLENTINE P 108/151
PIN: 9860-82-8546	DESC: 24 PH1 REC BALLENTINE P 108/151
PIN: 9860-82-8545	DESC: 25 PH1 REC BALLENTINE P 108/151
PIN: 9860-82-8523	DESC: 26 PH1 REC BALLENTINE P 108/151
PIN: 9860-82-8419	DESC: 27 PH1 REC BALLENTINE P 108/151
PIN: 9860-82-7499	DESC: 28 PH1 REC BALLENTINE P 108/151
PIN: 9860-82-7479	DESC: 29 PH1 REC BALLENTINE P 108/151
PIN: 9860-82-7459	DESC: 30 PH1 REC BALLENTINE P 108/151
PIN: 9860-82-7448	DESC: 31 PH1 REC BALLENTINE P 108/151



PIN: 9860-82-7428	DESC: 32 PH1 REC BALLENTINE P 108 151
PIN: 9860-82-7408	DESC: 33 PH1 REC BALLENTINE P 108 151
PIN: 9860-82-6477	DESC: 34 PH1 REC BALLENTINE P 108 151
PIN: 9860-82-3510	DESC: OPEN SPACE 1 PH1 REC BALLENTINE P 108 151
PIN: 9860-82-7414	DESC: OPEN SPACE 2 PH1 REC BALLENTINE P 108 151

EXHIBIT B



Additional Land

1. Any land owned by the Declarant or hereinafter acquired by Declarant located immediately adjacent to or in proximity to the Property.

EXHIBIT C



FORM OF GROUND LEASE

GROUND LEASE

THIS LEASE ("this Lease" or "the Lease") made and entered into this _____ day of _____, 20____, by and between ORANGE COMMUNITY HOUSING AND LAND TRUST ("OCHLT" or "Lessor" or "the Lessor") and _____ "Lessee" or "the Lessee").

WHEREAS, OCHLT is organized for the purpose of developing and preserving decent, affordable housing opportunities for low and moderate income people who might otherwise not be able to afford to own a home; and

WHEREAS, OCHLT uses long term land leases as a tool to provide and preserve affordable housing; and

WHEREAS, the Lessee enters into this Lease to obtain those benefits to which the Lessee is entitled under the Lease and to further the charitable purposes of the Lessor; and

WHEREAS, Lessor and Lessee recognize the special nature of the terms and conditions of this Lease, and each of them, with the independent and informed advice of legal counsel, freely accepts these terms and conditions, including those terms and conditions that may affect the marketing and resale price of the Leasehold Estate;

NOW THEREFORE, in consideration of the foregoing recitals, of mutual promises of Lessor and Lessee, and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Lessor and Lessee agree as follows:

ARTICLE 1: Letters of Stipulation and Acknowledgment

1.1 LETTERS: In order to assure that Lessee fully understands and accepts the unique nature of this Lease, Lessor requires that Lessee and Lessee's Counsel review and sign the Lessee's Letter of Stipulation and Lessee's Attorney's Letter of Acknowledgement in the forms attached to this lease as Exhibits A and B.

ARTICLE 2: Demise of Leased Premises

2.1 LEASED PREMISES: Lessor leases to Lessee and Lessee hires from Lessor, the Land and any improvements thereon (referred to in this Lease as the "Leased Premises") described in the attached Exhibit C: LEASED PREMISES. Lessee takes the Leased Premises "as is" as of the date of this Lease.

ARTICLE 3: Duration of Lease



3.1 TERM: The term of this Lease will be 99 years, commencing on _____, 20____, and terminating on _____, 2____, unless terminated sooner or extended as provided below.

3.2 LESSEE'S OPTION TO EXTEND: Lessee may extend the term of this Lease for one (1) additional period of 99 years upon the following conditions:

a. This Lease must be in effect at the time notice of exercise is given and on the last day of the term.

b. Lessee must not be in default on any term of this Lease or on any term of a Permitted Mortgage (as hereinafter defined).

c. Not more than 365 nor less than 180 days before the last day of the current term, Lessor will give Lessee written notice, stating the date of expiration of the Lease, describing any changes that Lessor intends to make to the terms of the Lease as permitted above, and reiterating the conditions for renewal ("the Expiration Notice").

d. The parties will execute a memorandum of lease in recordable form, acknowledging the fact that the option has been exercised and otherwise complying with the requirements of law for an effective memorandum of lease.

3.3 CHANGE OF LESSOR; LESSEE'S RIGHT TO PURCHASE: Subject to the requirements of any restrictions or rights to purchase Lessor may have granted any governmental entity which will take priority over the provisions of this subsection, this Lease will continue in effect regardless of any change in the ownership of the Leased Premises. However, if Lessor attempts to convey the Leased Premises to any person or entity other than a nonprofit corporation, charitable trust, governmental agency or other similar entity sharing the goals described in the Recitals above (or as security for a mortgage loan), the Lessee will have a right of first refusal to purchase the Leased Premises. This right will be as specified in the attached Exhibit D: FIRST REFUSAL. Any sale or other transfer contrary to this section 3.3 will be null and void.

ARTICLE 4: Use of Leased Premises

4.1 RESIDENTIAL USE ONLY: Lessee and any person occupying the Leased Premises will use the Leased Premises only for residential purposes and the accessory uses permitted under the applicable zoning regulations and will abide by any applicable declaration of restrictions described in the attached Exhibit E: SPECIAL USE RESTRICTIONS.

4.2 RESPONSIBLE USE AND COMPLIANCE WITH LAW: Lessee will maintain the Leased Premises in good, safe, and habitable condition in all respects, except for normal wear and tear, in full compliance with all applicable laws and regulations. Lessee will attend a home maintenance class offered by Lessor after purchasing the Leasehold Estate.

4.3 RESPONSIBLE FOR OTHERS: Lessee will be responsible for the use of the Leased Premises by all residents and their families, friends and visitors and anyone else using the Leased Premises with their consent and will make all such people aware of the spirit, intent and appropriate terms of this Lease.

4.4 OCCUPANCY: Lessee will occupy the Leased Premises for at least eight (8) months of each year of this Lease, unless precluded from doing so by doctor certified medical needs or otherwise agreed by Lessor. Occupancy by spouses, domestic partners, children of Lessee, or other persons agreed upon by Lessor will be deemed occupancy by Lessee.

4.5 INSPECTION: Lessor may inspect the Land not more than once a year at any reasonable time and in a reasonable manner upon at least twenty-four hours oral notice to Lessee. Lessor may inspect the Improvements located on the Land only if in its sole discretion, it determines there is



evidence that Lessee has violated his/her obligations under Section 4.2 of this Lease. Lessor may inspect any portion of the Leased Premises at any time without notice to Lessee in the event of an emergency.

4.6 LESSEE'S RIGHT TO PEACEFUL ENJOYMENT: So long as Lessee fulfills his/her obligations under this Lease, he/she will have the peaceful and undisturbed enjoyment of the Leased Premises.

ARTICLE 5: Ground Lease Fee

5.1 GROUND LEASE FEE: In consideration of the continued use and occupancy of the Leased Premises, Lessee shall pay to Lessor a monthly ground lease fee (the Ground Lease Fee), established at the commencement of this lease to be _____ dollars (\$ _____), which is equal to:

- (a) A Use Fee established at the commencement of this lease to be _____ dollars (\$ _____); plus
- (b) A Stewardship Fee, established at the commencement of this lease to be _____ dollars (\$ _____).
 - (i) *Stewardship Fee:* The parties acknowledge that the Lessee is responsible for all maintenance and repair of the Leased Premises, as set forth in this Lease. As an additional assurance that all Lessees are able to comply with their maintenance and repair obligations, Lessor and Lessee agree that a Stewardship Fee will be collected from Lessee as part of the Ground Lease Fee, and held as a reserve by Lessor for the capital maintenance of specific portions of the Leased Premises.
 - (ii) *Use of the Stewardship Fee Reserves:* Policies and procedures for the use of Stewardship Fee Reserves are specified in Exhibit F: STEWARDSHIP FEE.
 - (iii) *Reserves to Remain with Property upon Resale:* The Stewardship Fee Reserves are explicitly the property of Lessor, but may only be used for the capital maintenance of the Property as specified in Exhibit F. Lessee acknowledges that the Stewardship Fee Reserves are intended for, and shall remain with the Leased Premises and not the Lessee. In the event that the Leasehold Estate is sold or transferred by Lessee, the unused Stewardship Fee Reserves will be retained by Lessor for the future capital maintenance of the Leased Premises
 - (iv) *Costs in Excess of Reserves:* Lessee may expect that up to the full amount of reserves will be available for capital maintenance as specified in Exhibit F. Any capital maintenance costs that exceed the amount of available Stewardship Fee Reserves will be borne by Lessee.
 - (v) *Yearly Report upon Request:* No later than September 30th of each year, Lessor will make available upon Lessee's request a detailed report of Stewardship Fee Reserves transactions for the prior fiscal year.

5.2 PAYMENT OF GROUND LEASE FEE: The Ground Lease Fee will be due and payable on the first day of each month. If the Lease commences on a day other than the first of the month, a



pro-rata portion of the Ground Lease Fee will be paid for the balance of the month at the time the Lease is executed.

If there are any unpaid Ground Lease Fees at the time this Lease is terminated or assigned, the Lessee will pay Lessor the unpaid balance, plus all applicable late fees and penalties, out of Lessee's proceeds, if any, from the sale of the Leasehold Estate.

Lessee agrees that the Ground Lease Fee may be collected by Lessor through automatic drafting of Lessee's bank account.

5.3 REDUCTION, DELAY OR WAIVER OF GROUND LEASE FEE: Lessor may reduce, delay or waive entirely the Ground Lease Fee from time to time for the purpose of ensuring affordable monthly housing costs for the Lessee. Any reduction, delay, or waiver must be in writing and signed by Lessor.

5.4 ADJUSTMENT OF GROUND LEASE FEE: If the provisions of Article 10 or Article 11 regarding transfers of the Lessee's interest in the Leased Premises or Section 4.4 regarding occupancy are suspended or invalidated for any period of time, then during that time the Ground Lease Fee will be increased to the fair rental value of the Leased Premises as determined by independent appraisal for use not restricted by the provisions of the suspended portions of the Lease.

The Ground Lease Fee will be recalculated yearly to take into account inflation and other factors as Lessor may reasonably choose. The maximum increase that may be imposed in any single year is 5%.

ARTICLE 6: Taxes and Assessments

6.1 TAXES AND ASSESSMENTS: Lessee will be responsible for payment of all taxes, utility charges, homeowner's association assessments and governmental assessments that relate to the Leased Premises even if the bills are issued in the name of Lessor.

6.2 LESSEE'S RIGHT TO CONTEST: Lessee may contest the amount or validity of any taxes related to the Leased Premises. Lessor will, upon written request by Lessee, join in the proceedings if Lessor determines it is necessary for Lessee to raise a valid objection to the tax in question. Lessee will bear all costs of the tax contest proceeding.

6.3 PAYMENTS IN EVENT OF DELINQUENCY: If Lessee fails to pay the taxes or other charges specified in section 6.1 above when due, Lessor may but is not obligated to pay taxes or charges and increase the Ground Lease Fee by the amount of the taxes or charges paid.

6.4 PROOF OF COMPLIANCE: If requested by the other party, the party paying any tax, assessment or charge required or permitted under this lease will provide the other with copies of receipts documenting payment.

ARTICLE 7: Ownership Rights

7.1 EXCLUSIVE RIGHTS TO LEASED PREMISES: Lessee will have the "Ownership Interest" in the Leased Premises, defined as the exclusive right during the term of this Lease to occupy and possess the land, buildings, structures, and other improvements, and fixtures attached to any improvements located on the Leased Premises, at the time of the execution of this Lease or constructed by Lessee during the term of this lease. Lessee will not sever or remove the Improvements from the Leased Premises.

7.2 CONSTRUCTION AND ALTERATION: Lessee may make new improvements or alter existing improvements on the Leased Premises upon the following conditions:

- (a) Lessee will bear all costs of construction;



- (b) All construction will be performed in a worker like manner in compliance with all applicable laws and regulations;
- (c) All construction will be consistent with the permitted uses set forth in Article 4;
- (d) Lessee will furnish to Lessor a copy of any plans and all building permits for the construction prior to commencing construction.
- (e) Lessee may not change the exterior building envelope of the Improvements without the prior written consent of Lessor.

7.3 PROHIBITION OF LIENS: Lessee will procure the record discharge of any mechanic's or materialman's claim of lien which might be filed against the Leased Premises within sixty (60) days of its filing. If Lessee fails to procure the record discharge of a claim of lien within the time allowed, Lessor may, but is not obligated to, discharge the same by paying the amount in question. Lessee may contest the validity of any lien asserted so long as Lessee furnishes a bond in an amount sufficient to release the Leased Premises from the lien. Any amounts paid by Lessor hereunder in respect of the liens will be deemed an additional Ground Lease Fee payable by Lessee upon demand.

7.4 MAINTENANCE AND SERVICES: Lessee will, at Lessee's sole expense, maintain the Leased Premises as required by section 4.2 above. Lessor will not be required to furnish any services or facilities, including but not limited to heat, electricity, air conditioning, or water, or to make any repairs to the Leased Premises, and Lessee hereby assumes the sole responsibility for furnishing all services or facilities.

7.5 DISPOSITION OF LEASED PREMISES UPON EXPIRATION OF LEASE TERM: Upon the expiration of the term of this Lease as such term may be extended or terminated in accordance with this Lease, Lessee will surrender the Leased Premises to the Lessor. The exclusive right to possess the Leased Premises will thereupon revert to Lessor, provided, however, that Lessor will promptly pay to Lessee as consideration for the Leased Premises an amount equal to Lessor's Resale Formula Price calculated in accordance with Article 10 below, as of the time of reversion of ownership, less the total amount of any unpaid Ground Lease Fee including any charges that may have been added to the Ground Lease Fee in accordance with this Lease.

ARTICLE 8: Financing

8.1 PERMITTED MORTGAGE: Lessee may mortgage his or her interest in the Leased Premises with the written consent of Lessor. Lessor will be required to consent to a proposed mortgage only if:

- (a) All mortgage documents, which must be submitted to Lessor ten (10) days in advance of closing, are in a form acceptable to Lessor;
- (b) Lessee is not in default on any obligation under this Lease;
- (c) The proposed loan documents comply with the requirements for a Permitted Mortgage set out in the attached Exhibit G: PERMITTED MORTGAGES, the terms and conditions of which are incorporated herein by reference. Lessor, Lessee, each Permitted Mortgagee and their respective successors in interest may rely upon and shall be bound by the provisions of the "Permitted Mortgages" exhibit and any Permitted Mortgage approved by Lessor.

Lessee will pay to Lessor at Lessor's option, as additional Ground Lease Fee, all fees, costs, and expenses, including, without limitation, reasonable attorneys' fees, incurred by Lessor in connection with any Permitted Mortgage.



8.2 REMOVAL OF CERTAIN PROVISIONS PURSUANT TO FORECLOSURE: In the event of foreclosure sale by a Permitted Mortgagee or the delivery of a conveyance to a Permitted Mortgagee in lieu of foreclosure in accordance with the provisions of the Lease, at the election of the Permitted Mortgagee the provisions of Article 10, sections 10.1 through 10.13 will be deleted and thereupon will be of no further force or effect as to only so much of the Security so foreclosed upon or transferred.

8.3 LESSOR'S RIGHT TO PROCEEDS IN EXCESS OF RESALE FORMULA PRICE: Lessee acknowledges that it would defeat Lessor's goal of providing affordable housing for the long term if Lessee could realize more than the Resale Formula Price established in Article 10 as the result of the foreclosure of a Permitted Mortgage. Accordingly, Lessee irrevocably assigns to Lessor any and all rights Lessee might have in the proceeds of a foreclosure sale of the Leasehold Interest in excess of the Resale Formula Price after satisfaction of the lien of any Permitted Mortgagee. Lessee instructs the Permitted Mortgagee or any party conducting any sale to pay the amount of said excess proceeds directly to Lessor, but the Permitted Mortgagee and its trustee will have no liability to Lessor or Lessee for the failure to distribute excess proceeds to Lessor. If, for any reason, the excess proceeds are paid to Lessee, Lessee agrees to pay the amount of the excess proceeds to Lessor promptly.

ARTICLE 9: Liability, Insurance, Damage and Destruction, Eminent Domain

9.1 LESSEE'S LIABILITY: Lessee assumes sole responsibility and liability to all persons and authorities related to the possession, occupancy, and use of the Leased Premises and will defend, indemnify, and hold Lessor harmless against all liability and claims of liability for injury or damage to person or property from any cause on or about the Leased Premises. Lessee waives all claims against Lessor for injury or damage arising from the Leased Premises except for claims arising out of Lessor's gross negligence or intentional wrongdoing.

9.2 PAYMENT BY LESSOR: If Lessor is required to pay any sum that is the Lessee's responsibility or liability, the Lessee will reimburse the Lessor for the payment and for reasonable expenses caused thereby.

9.3 INSURANCE: Lessee will keep all Improvements continuously insured against loss or damage by fire and other hazards for the full replacement value of the Improvements and will maintain premises liability insurance covering the Land and Improvements insuring Lessee against all liability assumed under this Lease, as well as all liability imposed by law. The hazard and liability insurance policies will name both Lessee and Lessor as "named insureds" so as to create the same liability on the part of insurer as though separate policies had been written for Lessee and Lessor.

Lessee will provide Lessor with copies of all policies and renewals of policies. All policies will also contain endorsements providing that they will not be cancelled, reduced in amount or coverage or otherwise modified by the insurance carrier without at least thirty (30) days' prior written notice to Lessor. Lessor will be entitled to participate in the settlement or adjustment of any losses covered by the policies of insurance.

9.4 DAMAGE OR DESTRUCTION: Subject to the insurance provisions of any declaration of covenants or unit ownership which will control over this lease, if the Improvements are damaged or destroyed by fire or other casualty, Lessee will promptly restore the Improvements to their condition preceding the damage and continue to pay the Ground Lease Fee unless



- a. The full repair or restoration is not reasonably practicable or
- b. The available insurance proceeds of the insurance policies maintained in accordance with Section 9.3 are less than eighty percent (80%) of the cost of the repair or restoration.

In either event, Lessee may terminate this lease after giving Lessor written notice within sixty (60) days of the loss and allowing Lessor sixty (60) days from the receipt of the notice to either

- a. Seek an adjustment from the insurer to increase the amount of insurance proceeds to cover at least eighty percent (80%) of the cost of the repairs or restoration, or
- b. Make arrangements to use the available proceeds to restore or replace the damaged Improvements with Improvements of reasonably equivalent quality with a floor area of at least eighty percent (80%) of the damaged Improvements.

If Lessor fails, within sixty days of receipt of Lessee's notice, to give Lessee notice that it has made arrangements to increase the insurance proceeds or restore or replace the Improvements as specified above, this Lease will terminate and the proceeds of the insurance maintained by Lessee will be paid in the following priority:

- a. To the payment of the expenses of collection of the proceeds;
- b. As may be permitted in any Permitted Mortgage then encumbering the Lessee's leasehold estate;
- c. To the Lessee up to the then applicable Resale Formula Price as of immediately prior to the casualty calculated pursuant to Article 10.
- d. The balance of the proceeds, if any, to Lessor.

9.5 EMINENT DOMAIN AND PUBLIC DEDICATION: If the entire Leased Premises are taken by eminent domain, this lease will terminate as of the date the Lessee is required to surrender possession of the Leased Premises, and the condemnation award will be allocated in the same manner as a casualty loss as set out in Section 9.4.

If less than the entire Leased Premises are taken, Lessor will in its discretion allocate some or all of the proceeds to enable Lessee to repair and restore that which may remain thereof while retaining the balance of the award. If the Lessor determines that the Leased Premises cannot be restored to a residential use consistent with this Ground Lease, the award will be distributed in accordance with Section 9.4. The prosecution or defense of any proceedings in which a party to this lease seeks damages for a taking will be at the expense of the party asserting the claim or defense. The parties agree to be named as a party to these proceedings if necessary for the other to assert a claim or defense so long as the party asserting the claim or defense agrees to reimburse the other for any costs it might incur as a first charge against any award.

9.6 RELOCATION OF LESSEE: If this Lease is terminated as the result of damage, casualty or taking, Lessor will take reasonable steps to grant Lessee a leasehold interest in other tracts it might own, if any, and Lessee agrees to contribute any proceeds or award received by Lessee to purchase or develop the other property and enter a Lease substantially similar to this one. In no event will Lessor be required to terminate the tenancy of any other lessee or withhold any property from development or rental in order to accommodate lessee and Lessor's failure to supply similar leasehold premises or any premises whatsoever will not give rise to any cause of action by Lessee against Lessor for damages, specific performance or other remedy.

ARTICLE 10: Transfer, Sale, or Disposition of Leasehold Interest

10.1 INTENT: Lessee acknowledges that the terms of this Lease, and in particular of this Article 10, are intended to preserve the affordability of the Leasehold for lower and moderate income households.



10.2 TRANSFERS TO QUALIFIED BUYERS: While living, Lessee may transfer his/her interest in the Leased Premises only to

- a. Lessor or
- b. a Qualified Buyer as defined below or
- c. a Permitted Mortgage Holder in lieu of foreclosure.

All such transfers will be subject to Lessor's review and purchase option rights set forth in this Article 10. Any attempted transfer not authorized under this Article 10 will be null and void.

A "Qualified Buyer" will mean a person or group of persons who meet the resident selection requirements of OCHLT described in the attached Exhibit H: OCHLT RESIDENT SELECTION REQUIREMENTS and/or those of any governmental entity providing funding for OCHLT, and whose household income does not exceed _____ percent (____%) of the median household income for the Standard Metropolitan Statistical Area that encompasses Orange County, North Carolina, as calculated and adjusted for household size from time to time by the U.S. Department of Housing and Urban Development (HUD) or any successor.

10.3 TRANSFER TO LESSEE'S HEIRS: So long as the recipient is willing to assume the Lessee's obligations under this lease and sign a Letter of Stipulation and a Letter of Acknowledgment of legal counsel (similar to those described in Article 1 of this Lease), Lessee may leave his or her interest in the Leasehold Estate by will or intestate succession to the following:

- a. The spouse of the Lessee; or
- b. The child or children of the Lessee; or
- c. Member(s) of the Lessee's household, including a domestic partner, who resided upon the Leased Premises for at least one year prior to the Lessee's death.

Any other heirs, legatees or devisees of Lessee must, in addition to submitting Letters of Stipulation and Acknowledgment as provided above, meet the definition of a Qualified Buyer. If unable to do so, they will not be entitled to possession of the Leased Premises but must transfer their interest in the Leased Premises in accordance with the provisions hereof.

10.4 LESSEE'S NOTICE OF INTENT TO SELL: Lessee will notify Lessor in writing of his/her desire to sell his/her interest in the Leased Premises.

Upon receiving Lessee's Intent to Sell Notice, Lessor will have 5 business days in which to make available to Lessee a list of approved home inspectors who may perform the Professional Inspection required by section 10.5 of this lease.

10.5 PROFESSIONAL INSPECTION: Lessee will commission an inspection of the Leased Premises (the Professional Inspection) by a home inspector acceptable to Lessor. Lessor will pay for the Professional Inspection.

10.6 UPFIT AND REPAIR REQUIREMENTS: Within 5 business days after Lessor receives the report from the Professional Inspection, Lessor will contact Lessee to schedule a Lessor's inspection of the Leased Premises (Lessor's Inspection). Within 5 business day's of Lessor's Inspection, Lessor will make available to Lessee a list of upfit and repair requirements which must be met by Lessee (the Upfit and Repair Requirements). Lessee will be expected to bear 100% of the costs of the Upfit and Repair Requirements. In preparing this list, Lessor will reference the standards described in Exhibit I: UPFIT AND REPAIR REQUIREMENTS.

10.7 APPRAISAL: At its discretion, Lessor may also commission an appraisal (the Appraisal) of the Property within 5 business days after receiving the report from the Professional Inspection. Lessor will pay for the Appraisal. The Appraisal will be performed by a licensed appraiser acceptable to Lessor and Lessee. The Appraisal will state the market value of the Property, rather than the leasehold value. Copies of the Appraisal are to be provided to both Lessor and Lessee



10.8 UPFIT AND REPAIR INSPECTION: After Lessee has completed the Upfit and Repair Requirements, he or she will contact Lessor to schedule an inspection of the completed upfits and repairs. Lessor will certify when the Upfit and Repair Requirements have been completed to Lessor's satisfaction.

10.9 LESSOR'S PURCHASE OPTION:

a. **Voluntary Sale:** Within (five) 5 business days of certifying Lessee's completion of the Upfit and Repair Requirements, Lessor will prepare its standard "Resale Agreement" document and notify Lessee that it is available to sign. When Lessee signs and returns the Resale Agreement, Lessor will have the option to purchase Lessee's interest in the Leased Premises ("the Purchase Option") at the Resale Formula Price calculated as set forth below.

The Purchase Option is designed to further the purpose of preserving the affordability of the Leasehold Estate for succeeding Qualified Buyers while taking fair account of the investment by the Lessee.

Lessor may exercise the Purchase Option upon giving Lessee written notice of the election ("the Notice of Exercise of Option") within forty-five (45) days of the receipt of the Resale Agreement signed by Lessee. Lessor, or any Qualified Buyer to whom Lessor may assign the Purchase Option, will have sixty days from the exercise of the Purchase Option in which to close the purchase of Lessee's interest in the Leased Premises. Unless Lessor and Lessee agree to extend either deadline, Lessee will be free to sell his/her interest in the Leased Premises in accordance with Section 10.10 if Lessor or its assignee fails to exercise the option or close the purchase within the time allowed.

b. **Foreclosure.** At any time after the commencement of foreclosure proceedings under a Permitted Mortgage, Lessor may purchase the Lessee's Leasehold Interest for the balance due under the Permitted Mortgage.

10.10 IF PURCHASE OPTION EXPIRES: If the Purchase Option expires and Lessor fails to complete the purchase within the period allowed by section 10.9 above, Lessee may sell his or her interest in the Leased Premises through Lessor to any Qualified Buyer, for not more than the then applicable Resale Formula Price.

10.11 PURCHASE OPTION PRICE: The Purchase Option Price shall be the lesser of (a) the value of the Property as determined by the Appraisal, should one have been commissioned and conducted as provided in 10.7 above or (b) the price calculated in accordance with the formula described below (the Resale Formula Price).

10.12 CALCULATION OF THE RESALE FORMULA PRICE: The Resale Formula Price will be equal to Lessee's Purchase Price, as stated below, plus appreciation of the Lessee's Investment Basis (as defined below) calculated as if the Investment Basis appreciated at the rate of 1.5% per annum. Appreciation for partial years will be prorated to the date of the calculation.

Lessee's Purchase Price: The parties agree that the Lessee's Purchase Price for the leased premises as of the commencement of the term of this Lease is \$ _____.

Lessee's Investment Basis: The Lessee's Investment Basis is calculated in Exhibit J: INVESTMENT BASIS. The parties agree that the Lessee's Investment Basis in the leased premises as of the commencement of the term of this Lease is \$ _____.

10.13 RIGHT OF FIRST REFUSAL IN LIEU OF OPTION: If the provisions of the purchase option set forth in this Article 10 become unenforceable for any reason, Lessor will nevertheless have



a right of first refusal to purchase the interest in the Leased Premises at the highest documented bona fide purchase price offer made to Lessee as specified in the exhibit D: FIRST REFUSAL. Any sale or transfer contrary to this section, when applicable, will be null and void.

ARTICLE 11: Assignment and Sublease

11.1 Except as otherwise provided in Article 8 (including Exhibit G) and Article 10, Lessee will not assign, sublease, sell, or otherwise convey any of Lessee's rights under this Lease without the prior written consent of the Lessor.

In the case of an approved sublease, the rental or occupancy fee charged the sub lessee will not be more than that amount charged the Lessee by the Lessor, plus an amount approved by Lessor to cover costs to Lessee for the Improvements.

In the case of an assignment, the total consideration for the assignment will not exceed the Resale Formula Price as calculated in accordance with Article 10 above.

ARTICLE 12: Default

12.1 DEFAULT BY LESSEE: It will be an event of default if Lessee fails to abide by any material term or condition in this Lease, or if Lessee fails to pay the Ground Lease Fee or other charges required by the terms of this Lease, a permitted mortgage, or any relevant owner's association declaration and the failure is not cured by Lessee or a Permitted Mortgagee within sixty (60) days after notice of the failure is given by Lessor to Lessee and Permitted Mortgagee.

Subsequent to a first default on the part of Lessee, it will be an event of default if Lessee fails to cure such failures within thirty (30) days after notice of failure is given by Lessor to Lessee and Permitted Mortgagee.

Subsequent to a second default by Lessee, Lessor may immediately declare the Lessee to be in default if Lessee fails to abide by any material term or condition in this Lease, or if Lessee fails to pay the Ground Lease Fee or other charges required by the terms of this Lease, a permitted mortgage, or any relevant owner's association declaration, and Lessor will so notify the Lessee and Permitted Mortgagee.

Lessee will be assessed a late fee for any payment, including ground lease fees, that Lessor does not receive within thirty days of its due date. The late fee will be 10% of any past due payment. For each additional 30 days that the payment remains delinquent, Lessor will charge an additional late fee which will be 10% of the original past due amount.

12.2 TERMINATION, FORFEITURE AND MODIFICATION OF LEASE: There will be no termination, forfeiture, or modification of the Lease without the prior written consent of any Permitted Mortgagee or until Permitted Mortgagee has failed to object to the intended action for more than thirty days after Lessor has sent Permitted Mortgagee written notice of its intended action. In the case of any of the events of default described above and with the written consent of any Permitted Mortgagee, and following the giving of any required notice of default and the failure of Lessee to cure the default within the applicable cure period, Lessor may give notice of the termination of this Lease to Lessee and initiate summary ejectment proceedings allowing Lessor to enter and retake possession of the entire Leased Premises. If this Lease is terminated by Lessor, or if Lessor reenters the Leased Premises after an Event of Default, the Lessee agrees to pay and be liable for any unpaid Ground Lease Fee, damages which may be due or sustained prior to or in connection with the termination or reentry, and all reasonable costs, fees and expenses (including, without limitation, reasonable attorneys' fees) incurred by Lessor in pursuit of its remedies under this Lease.



If Lessor elects to terminate the Lease and a Permitted Mortgage remains outstanding, a new Lease will automatically be created between the Lessor and the Permitted Mortgagee, which Lease will be for the remainder of the term of the Lease, with the same priority thereto

12.3 DEFAULT BY LESSOR: Lessor will in no event be in default in the performance of any of its obligations under the Lease unless and until Lessor has failed to perform the obligations within sixty (60) days, or the additional time as is reasonably required to correct any default, after notice by Lessee to Lessor properly specifying Lessor's failure to perform any the obligation.

ARTICLE 13: Arbitration

13.1 ARBITRATION PROCESS: Should any grievance or dispute other than a default on a monetary term arise between Lessor and Lessee concerning the terms of this Lease that cannot be resolved by normal interaction, the following arbitration procedure will be used.

Lessor or Lessee will give written notice to the other of its selection of a disinterested arbitrator. Within fifteen (15) days of the receipt of this written notice, the other party may give written notice to the first party appointing a disinterested arbitrator of its own choice. These two arbitrators will select a third arbitrator. If the other party fails to name an arbitrator within 15 days of receiving the notice from the first party, the arbitrator selected by the first party will be the sole arbitrator.

The arbitrator or arbitrators will hold a hearing within thirty (30) days after the initial written notice by the initiator of the arbitration process. At the hearing Lessor and Lessee will have an opportunity to present evidence and question witnesses in the presence of each other. As soon as reasonably possible, and in no event later than fifteen (15) days after the hearing, the arbitration panel will make a written report to the Lessor and Lessee of its findings and decisions, including a personal statement by each arbitrator of his/her decision and the reasons for it. The arbitrators will decide the dispute or claim in accordance with the substantive law of North Carolina and what is just and equitable under the circumstances. The decision and award of the majority of the arbitration panel will be binding and final.

ARTICLE 14: General Provisions

14.1 LESSEE'S MEMBERSHIP IN OCHLT: The Lessee under this Lease will automatically be a regular voting member of the OCHLT.

14.2 NOTICES: Whenever this Lease requires either party to give notice to the other, the notice will be given in writing and delivered in person or mailed, by certified or registered mail, return receipt requested, to the party at the address set forth below, or the other address designated by like written notice:

If to Lessor: Orange Community Housing and Land Trust, President
PO Box 307
Carrboro, NC 27510

With copies to: David M. Rooks, III
PO Box 2208



Chapel Hill, NC 27515-2208

If to Lessee:

All notices, demands and requests will be effective upon being deposited in the United States Mail or, in the case of personal delivery, upon actual receipt.

14.3 NO BROKERAGE: Lessee warrants that it has not dealt with any broker other than _____ in connection with the consummation of this Lease, and in the event any claim is made against Lessor relative to dealings with brokers other than _____, Lessee will defend the claim against Lessor with counsel of Lessor's selection and save harmless and indemnify Lessor on account of loss, cost or damage which may arise by reason of any the claim.

14.4 SEVERABILITY AND DURATION : If any part of this Lease is declared unenforceable or invalid, the material will be read out of this Lease and will not affect the validity of any other part of this Lease or give rise to any cause of action of Lessee or Lessor against the other, and the remainder of this Lease will be valid and enforced to the fullest extent permitted by law. It is the intention of the parties that their respective options to purchase and all other rights under this Lease will continue in effect for the full term of this Lease and any renewal thereof, and the options and other rights will be considered to be coupled with an interest. In the event any the option or right will be construed to be subject to any rule of law limiting the duration of the option or right, the time period for the exercising of the option or right will be construed to expire ninety (90) years from the creation of the option or right in question.

14.5 WAIVER: The waiver by Lessor at any given time of any term or condition of this Lease, or the failure of Lessor to take action with respect to any breach of any the term or condition, will not be deemed to be a waiver of the term or condition with regard to any subsequent breach of the term or condition, or of any other term or condition of the Lease. Lessor may grant waivers in the terms of this Lease, but the waivers must be in writing and signed by Lessor before being effective.

The subsequent acceptance of Ground Lease Fee payments by Lessor will not be deemed to be a waiver of any preceding breach by Lessee of any term or condition of this Lease, other than the failure of the Lessee to pay the particular Ground Lease Fee so accepted, regardless of Lessor's knowledge of the preceding breach at the time of acceptance of the Ground Lease Fee payment.

14.6 LESSOR'S RIGHT TO PROSECUTE OR DEFEND: Lessor will have the right, but will be under no obligation, to prosecute or defend, in its own or the Lessee's name, any actions or proceedings appropriate to the protection of its title to, and Lessee's interest in, the Leased Premises. Whenever requested by Lessor, Lessee will give Lessor all reasonable aid in any the action or proceeding.

14.7 CONSTRUCTION: Whenever in this Lease a pronoun is used it will be construed to represent either the singular or the plural, masculine or feminine, as the case will demand.

14.8 CAPTIONS AND TABLE OF CONTENTS: The captions and table of contents appearing in this Lease are for convenience only, and are not a part of this Lease and do not in any way limit or amplify the terms or conditions of this Lease.

14.9 PARTIES BOUND: This Lease sets forth the entire agreement between Lessor and Lessee with respect to the leasing of the Leased Premises. It is binding upon and inures to the benefit of these parties and, in accordance with the provisions of this Lease, their respective successors in interest, each of whom will be a third party beneficiary of the Lease entitled to rely upon and enforce



its provisions. This Lease may be altered or amended only by written notice executed by Lessor and Lessee or their legal representatives or, in accordance with the provisions of this Lease, their successors in interest. However, as long as the Lessee's interest in the Leased Premises is encumbered by a Permitted Mortgage:

(a) There will be no modification of this Lease without the written approval of the Permitted Mortgagee, which approval will not be unreasonably withheld or delayed. The passage of thirty days after submittal to a Permitted Mortgagee of a proposed Lease amendment without approval or disapproval by the Permitted Mortgagee will be deemed approval thereof.

(b) Unless (i) the Lessee is in default under the terms of this Lease, (ii) the Lessor has notified the Lessee and the Permitted Mortgagee of the default as required in this Lease, and (iii) the default has not been cured within the applicable cure period, there will be no termination, surrender or forfeiture of this Lease or the Leased Premises without the written approval of the Permitted Mortgagee. The passage of thirty days after submittal to a Permitted Mortgagee of notice of intention to terminate the Lease without approval or disapproval by the Permitted Mortgagee will be deemed approval thereof.

14.10 GOVERNING LAW: This Lease will be interpreted in accordance with and governed by the laws of North Carolina. The language in all parts of this Lease will be, in all cases, construed according to its fair meaning and not strictly for or against Lessor or Lessee.

14.11 RECORDING: The parties agree to execute a Memorandum of Lease. The Memorandum of Lease will not set forth the rent or other charges payable by Lessee under this Lease and will expressly state that it is executed pursuant to the provisions contained in this Lease, and is not intended to vary the terms and conditions of this Lease.

14.12 DISCLOSURE OF INFORMATION: Lessor and its successors in interest may disclose information concerning Lessee and this Lease to any Permitted Mortgagee, to any prospective Permitted Mortgagee, to their respective successors in interest, and to their respective agents and employees. Any Permitted Mortgagee and its successors in interest may disclose information concerning Lessee, this Lease, and any Permitted Mortgagee to Lessor, to Lessor's successors in interest, and to their respective agents and employees.

IN WITNESS WHEREOF, the parties have executed this lease at Chapel Hill, NC, on the day and year first above written.

ORANGE COMMUNITY HOUSING AND LAND TRUST

By: _____
President

Lessee: _____

Lessee: _____



NORTH CAROLINA
ORANGE COUNTY

I, _____, Notary Public for said County and State, certify that
_____, personally came before me this day and acknowledged that he/ she is
_____ of Orange Community Housing and Land Trust, a corporation, and
that he/she signed this instrument by authority duly given and as the act of the corporation.
Witness my hand and official stamp\seal, this the _____ day of _____, 200_.

Notary Public _____ My Commission Expires: _____

NORTH CAROLINA
ORANGE COUNTY

I, _____, Notary Public for said County and State, certify that
_____, personally came before me this day and acknowledged
the due execution of the foregoing instrument.
Witness my hand and official stamp\seal, this the _____ day of _____, 200_.

Notary Public _____ My Commission Expires: _____

NORTH CAROLINA
ORANGE COUNTY

I, _____, Notary Public for said County and State, certify that
_____, personally came before me this day and acknowledged
the due execution of the foregoing instrument.
Witness my hand and official stamp\seal, this the _____ day of _____, 200_.

Notary Public _____ My Commission Expires: _____



■ Exhibit A : FORM: LETTER OF STIPULATION

Letter of Stipulation

To: ORANGE COMMUNITY HOUSING AND LAND TRUST ("the OCHLT")

Date: _____

This letter is given to OCHLT to become an exhibit to a Lease between the OCHLT and me. I will be leasing a parcel of land and the home located on that parcel of land from OCHLT for the term of the lease, which will give me an "ownership interest" in the property. I will therefore become what is described here as a "OCHLT homeowner."

My legal counsel, _____, has explained to me the terms and conditions of the Lease and other legal documents that are part of this transaction. I understand the way these terms and conditions will affect my rights as a OCHLT homeowner, now and in the future.

In particular I understand and agree with the following points.

- One of the goals of the OCHLT is to keep OCHLT homes affordable for lower-income households from one OCHLT homeowner to the next. I support this goal as a OCHLT homeowner and as a member of the OCHLT.
- The terms and conditions of my Lease will keep my home affordable for future "Qualified Buyers" (as defined in the lease). If and when I want to sell my home, the lease requires that I sell it either to the OCHLT or to another Qualified Buyer. The terms and conditions of the lease also limit the price for which I can sell the home, in order to keep it affordable for the Qualified Buyers.
- It is also a goal of the OCHLT to promote resident ownership of OCHLT homes. For this reason, my Lease requires that if I and my family move out of our home permanently, we must sell it. We cannot continue to own it as absentee owners.
- I understand that I can leave my home to my child or children or other members of my household and that, after my death, they can own the home for as long as they want to live in it and abide by the terms of the Lease, or they can sell it on the terms permitted by the Lease.
- As a OCHLT homeowner and a member of the OCHLT, it is my desire to see the terms of the Lease and related documents honored. I consider these terms fair to me and others.

Sincerely,



■ Exhibit B: FORM: LETTER OF ACKNOWLEDGEMENT

Letter of Acknowledgment

I, _____, have been independently employed by _____ (hereinafter "the Client") who intends to enter into a long term ground lease with Orange Community Housing and Land Trust for the land and home located at _____

In connection with the contemplated transaction I reviewed with the Client the following documents relating to the transaction:

- a. this Letter of Acknowledgment and a Letter of Stipulation from the Client
- b. a proposed Ground Lease conveying the "Leased Premises" to the Client
- c. other written materials provided by the OCHLT.

The Client has received full and complete information and advice regarding this conveyance and the foregoing documents. My advice and review has been given to reasonably inform the Client of the present and foreseeable risks and legal consequences of the contemplated transaction.

The Client is entering the aforesaid transaction in reliance on her own judgment and upon her investigation of the facts. The full and complete advice and information provided by me was an integral element of the investigation.

Name _____ Date _____

Title _____

Firm/Address _____



■ Exhibit C: LEASED PREMISES

Insert legal description of area of Leased Premises and appurtenant title rights and obligations.
Reference all easements, rights, utilities access etc. associated with the Leased Premises



■ Exhibit D: FIRST REFUSAL

Whenever any party under the Ground Lease will have a right of first refusal as to certain property, the following procedures will apply. If the owner of the property offering it for sale (“Offering Party”) will within the term of the Ground Lease receive a bona fide, third-party offer to purchase the property that the Offering Party is willing to accept, the holder of the right of first refusal (the “Holder”) will have the following rights:

- a. Offering Party will give written notice of the offer (“the Notice of Offer”) to Holder setting forth (a) the name and address of the prospective purchaser of the property, (b) the purchase price offered by the prospective purchaser and (c) all other terms and conditions of the sale. Holder will have a period of forty-five (45) days after the receipt of the Notice of Offer (“the Election Period”) within which to exercise the right of first refusal by giving notice of intent to purchase the property (“the Notice of Intent to Purchase”) for the same price and on the same terms and conditions set forth in the Notice of Offer. the Notice of Intent to Purchase will be given in writing to the Offering Party within the Election Period.
- b. If Holder exercises the right to purchase the property, the purchase will be completed within sixty (60) days after the Notice of Intent to Purchase is given by Holder (or if the Notice of Offer will specify a later date for closing, the date) by performance of the terms and conditions of the Notice of Offer, including payment of the purchase price provided therein.
- c. Should Holder fail to exercise the right of first refusal within the Election Period, then the Offering Party will have the right (subject to any other applicable restrictions in the Ground Lease) to go forward with the sale which the Offering Party desires to accept, and to sell the property within one (1) year following the expiration of the Election Period on terms and conditions which are not materially more favorable to the purchaser than those set forth in the Notice. If the sale is not consummated within the one-year period, the Offering Party’s right so to sell will end, and all the foregoing provisions of this section will be applied again to any future offer, all as aforesaid. If a sale is consummated within the one-year period, the purchaser will purchase subject to a renewed right of first refusal in said property.

■ Exhibit E: SPECIAL USE RESTRICTIONS



To be attached when necessary to stipulate use restrictions not included under Zoning



■ Exhibit F: STEWARDSHIP FEE

Reserves collected through the Lessee's monthly Stewardship Fee are explicitly the property of Lessor, but may only be used for the capital maintenance of the Property. Lessor must reserve the full amount of the funds for this purpose.

The Stewardship Fee Reserves will be administered by Lessor, and Lessor will decide which capital maintenance costs are eligible for the use of the reserves. Lessee may request release of funds, and Lessor shall release funds at its sole discretion, if the requested use is found to be necessary and in accordance with the Reserve's intended use. Specifically, the Stewardship Fee reserves will be used for the maintenance of the following capital systems:

- The Roof
- The HVAC System
- The Water Heater
- The Exterior Siding and Trim
- The Interior Floor Finishes
- Routine Termite Inspection and Continuous Termite Warranty

In communities with homeowner or condominium owner associations, a portion of the above capital maintenance costs will be covered by the owner association dues. In this case, capital maintenance items that are specifically the responsibility of the owner association are explicitly excluded from coverage under the Stewardship Fee reserves. Lessee's monthly Stewardship Fee will be adjusted to reflect coverage of these items under the owner association dues.

Lessor will manage the above capital systems maintenance in consultation with Lessee. System components will be replaced with products of comparable quality and features. At Lessor's discretion, during a system replacement Lessee may opt to replace components with higher rather than comparable quality products. In this case, Lessee will pay the cost difference between the comparable quality and the higher quality product.

It is incumbent upon the Lessee to notify Lessor immediately of any deficiencies in the above capital systems. Damages resulting from failure to make prompt notice of deficiencies are the responsibility of Lessee.



■ Exhibit G: PERMITTED MORTGAGES

The provisions set forth in this Exhibit are understood to be provisions of Article 8 of the Lease to which the Exhibit is attached and in which the Exhibit is referenced. All terminology used in this Exhibit will have the meaning assigned to it in the Lease.

1. A "Permitted Mortgage" as the term is used in Section 8.1 is a mortgage which is approved in advance by Lessor and:

a. Runs in favor of either (1) an institutional lender such as, but not limited to, a federal, state, or local housing finance agency, bank, savings and loan association, insured credit union, an insurance company, a pension and/or profit-sharing fund or trust, or any combination of the foregoing, the policies and procedures of which institutional lender are subject to direct governmental supervision, or (2) a "community development financial institution", or similar nonprofit lender to housing projects for low and moderate income persons (as defined by reference to the membership criteria for the National Association of Community Development Loan Funds, a nonprofit corporation with its principal office located in Philadelphia, Pennsylvania); and

b. Is a first lien on Lessee's Leasehold Estate (Lessor may, but is not obligated to, approve a second lien on the Leasehold Estate); and

c. Provides that prior to accelerating the note secured by the mortgage and commencing foreclosure proceedings, the Permitted Mortgage holder will give Lessor notice of a default in any of the mortgagor's obligations and the right but not the obligation to cure the default within 120 days after its receipt of the notice, provided that current payments due to the holder are made during this period.

d. Provides that if after the cure period the holder intends to accelerate the note secured by the Permitted Mortgage and/or initiate foreclosure proceedings under the Permitted Mortgage, the holder will first notify Lessor of its intention to do so and Lessor will have the right, but not the obligation, to pay off or purchase the indebtedness secured by the Permitted Mortgage and acquire the security interest within 30 days of the receipt of the notice; and

e. Provides that in the event of foreclosure sale by a Permitted Mortgagee or the delivery of a deed to a Permitted Mortgagee in lieu of foreclosure, upon acquisition of the Lessee's interest in the Leased Premises by the Permitted Mortgagee, the Permitted Mortgagee will give the Lessor written notice of such acquisition and the Lessor will have an option to purchase the Lessee's interest in the Leased Premises from the Permitted Mortgagee for the full amount owing to the Permitted Mortgagee under the Permitted Mortgage; provided, however, that the Lessor gives written notice to the Permitted Mortgagee of the Lessor's intent to purchase the Lessee's interest in the Leased Premises within thirty (30) days following the Lessor's receipt of the Permitted Mortgagee's notice of such acquisition of the Lessee's interest; further provided that Lessor will complete the purchase of the Lessee's interest in the Leased Premises within sixty (60) days of having given written notice of its intent to purchase; and provided that, if the Lessor does not complete the purchase within such period, the Permitted Mortgagee will be free to sell the Lessee's interest in the Leased Premises to another person;

2. LESSOR'S CONSENT TO PERMITTED MORTGAGE: Lessee must obtain Lessor's consent to a mortgage in advance and will give Lessor copies of all proposed loan documents at least 10 days prior to Lessee's intended closing date. If the proposed mortgage fully complies with the requirements of Section 8.1, Lessor must consent to the mortgage if:

a. Lessee is not in default on this Lease or to any creditor;



b. The Permitted Mortgage and related documentation contain no terms other than provisions generally contained in mortgages used for similar transactions in the Orange County, North Carolina area by institutional mortgagees;

c. The Permitted Mortgage and related documentation do not contain any provisions which could be construed as rendering Lessor or any subsequent holder of the Lessor's interest in the Leased Premises liable for the payment of the debt evidenced by the note and Permitted Mortgage or expose Lessor or Lessor's interest in the Leased Premises to and deficiency judgment;

d. The Permitted Mortgage provides that the holder's rights to Lessee's share of any condemnation award will attach only to that share of the award allocated to the Lessee in accordance with Section 9.6 of this Lease;

e. Nothing in the Permitted Mortgage or related documentation obligates Lessor to execute an assignment of the Ground Lease Fee or other rent payable by Lessee under the terms of this Lease.

3. RIGHTS OF PERMITTED MORTGAGEE: Any Permitted Mortgagee will without the requirement of consent by the Lessor have the right, but not the obligation, to:

a. Cure any default under this Lease, and perform any obligation required hereunder, the cure or performance by a Permitted Mortgagee being effective as if the same had been undertaken and performed by Lessee. In the event that Lessor sends a notice of default under the Lease to Lessee, Lessor shall also send a notice of Lessee's default to Permitted Mortgagee.

b. Acquire and convey, assign, transfer and exercise any right, remedy or privilege granted to Lessee by this Lease or otherwise by law, subject to the provisions, if any, in said Permitted Mortgage, which may limit any exercise of any the right, remedy or privilege; and

c. Rely upon and enforce any provisions of this Lease to the extent that the provisions are for the benefit of a Permitted Mortgagee.

Permitted Mortgagee will not, as a condition to the exercise of its rights, be required to assume liability for the performance of the obligations of the Lessee under this lease. Any payment or performance or other act by Permitted Mortgagee hereunder will not be construed as an agreement by Permitted Mortgagee to assume liability except to the extent Permitted Mortgagee actually takes possession of the Security and the Leased Premises or collects fees or rentals from occupants. If Permitted Mortgagee does take possession of the Security and thereupon transfers the Security, any the transferee will be required to enter into a written agreement assuming liability under this Lease and upon any the assumption the Permitted Mortgagee will automatically be released from liability hereunder.

So long as Permitted Mortgagee has a security interest in the ground leasehold or the Improvements, there will be no merger of the leasehold and fee estates even if both are owned by the same person or entity unless Permitted Mortgagee consents to the merger. If the estate of Lessor is owned at any time by Lessee (regardless of a merger), or by any person in which Lessee has a direct or indirect interest, Permitted Mortgagee will not be obligated to cure any default of Lessee hereunder as condition to the forbearance by Lessor in the exercise of Lessor's remedies as herein provided.

4. APPROVAL OF AMENDMENTS: Any amendments to this Lease will be subject to the written approval of Permitted Mortgagee, which approval will not be unreasonably withheld or delayed. The passage of thirty (30) days after submittal to Permitted Mortgagee of a proposed amendment without approval or disapproval by Permitted Mortgagee will be deemed approval thereof.

5. NEW LEASE TO PERMITTED MORTGAGEE: Upon written request of the Permitted Mortgagee made within sixty (60) days of the termination of this Lease or upon its



rejection or disaffirmance under bankruptcy law or other law affecting creditors' rights, Lessor will enter into a new lease of the Leased Premises with the Permitted Mortgagee (or with any party designated by the Permitted Mortgagee, subject to Lessor's approval, which approval will not be unreasonably withheld). The lease term will be for the remainder of the term of the Lease, effective as of the date of the termination, rejection or disaffirmance, and upon all the terms and provisions contained in the Lease. The written request will be accompanied by a copy of the new lease, duly executed and acknowledged by the Permitted Mortgagee or the party designated by the Permitted Mortgagee to be the Lessee and the Permitted Mortgagee will have cured all defaults under the Lease which can be cured by the payment of money. Any new lease made pursuant to this Section will have the same priority with respect to other interests in the Leased Premises as this Lease. The provisions of this Section will survive the termination, rejection or disaffirmance of the Lease and will continue in full effect thereafter to the same extent as if this Section were an independent contract made by Lessor, Lessee and the Permitted Mortgagee.

6. **NO TERMINATION DURING FORECLOSURE:** The Lessor will have no right to terminate this Lease once Permitted Mortgagee commences foreclosure in accordance with the provisions hereof and is diligently pursuing the same.

7. **PROVISIONS SUBJECT TO FORECLOSURE:** In the event of foreclosure sale by a Permitted Mortgagee or the delivery of a deed to a Permitted Mortgagee in lieu of foreclosure in accordance with the provisions hereof, at the election of the Permitted Mortgagee, the provisions of Sections 10.1 through 10.12 will be deleted and thereupon will be of no further force or effect as to only so much of the Security so foreclosed upon or transferred.

8. **NOTICE:** Whenever in this Article notice is to be given to Permitted Mortgagee, the notice will be given in the manner set forth in Section 14.2 at the address which has been given by the Permitted Mortgagee to Lessor.

9. **COSTS OF PERMITTED MORTGAGE:** Lessee will pay to Lessor at Lessor's option, as additional rent hereunder, all fees, costs and expenses, including, without limitation, reasonable attorneys' fees, incurred by Lessor in connection with any Permitted Mortgage.



■ Exhibit H: OCHLT RESIDENT SELECTION POLICY

The following selection criteria will be applied to OCHLT homebuyers in addition to the buyer qualifications required by the subsidy programs that fund OCHLT developments.

Criteria Applicants Must Meet When Buying Homes Not Currently Owned By A Land Trust Homeowner

1. Subsidy Rules: If a home is subsidized, all subsidy rules apply.
2. Maximum income: Emphasis is on households earning less than 80% of the area median income. However, incomes up to 100% of Area Median Income are allowable in some instances.

In general, we expect each homebuyer household to contain an individual working full time. Exceptions can be made for households that do not contain a full time worker given that a reasonable explanation and documentation is provided.

3. First-Time homebuyers: applicant must be a first time homebuyer according to HUD's HOME rules definition, unless he/she is moving from residency in a CLT home and it is permissible by subsidy regulations.

- If there is compelling need and no public subsidy OCHLT may drop first time homebuyer guideline. In those instances, there must be notation as to why, included in the buyer file.
- CLT membership: in order to provide mobility for owners of "resale restricted" CLT homes, OCHLT may sell homes to applicants who have moved from prior CLT residency in a different community (only where permissible). In addition, current OCHLT homeowners will be considered for homes that better suit their needs, if there is a compelling need (and it is permissible).

4. Assets: Maximum permissible levels of financial assets are as follows:

- 29 years of age or younger - \$30,000
- 30-34 years of age - \$35,000
- 35-39 years of age - \$45,000
- Over 40 years of age - No asset limit

5. Length of residency: Applicants must live or work in Orange County before they purchase an OCHLT home. In some cases that must be for a minimum of one year.

6. Student Status: OCHLT defines a student as someone who works less than 32 hours a week and is enrolled in an undergraduate, graduate, community college or other educational program, or someone whose employment is related to their educational program, such as a post-doc or medical resident.



Students (both single and married) are considered to have “temporarily reduced” income and may therefore only purchase OCHLT homes when certain conditions exist:

- o In the case of new homes under construction: students are not eligible to reserve or buy homes until certificates of occupancy are obtained on the homes. For developments with more than 6 affordable units, students are eligible to purchase 15% of the total units. For developments of 6 units or less students are prohibited from reserving or purchasing units. Regardless of the number of units, students are eligible to purchase any remaining unsold 45 days after C/O has been issued.
- o With regard to existing homes: students are not eligible to purchase a house until OCHLT has marketed it for 45 days and been unable to sell it.

7. Appropriate Unit Size: OCHLT will attempt to match household size to unit size, prioritizing larger units for larger households. In general, the minimum household size considered appropriate for each unit size will be as follows:

Unit Size	Preferred Minimum Household Size
0-BR	1
1-BR	1
2-BR	2
3-BR	3
4-BR	4
5-BR	5

In determining the maximum number of persons that may occupy a unit, OCHLT will use the occupancy ordinances of the municipality in which the unit is located.

- o In the case of new homes under construction: Buyers who do not meet or exceed the minimum household size for a unit will not be eligible to reserve or buy it until a certificate of occupancy is issued.
- o With regard to existing homes: Buyers who do not meet or exceed the minimum household size for a unit will not be eligible to purchase it until 45 days after marketing has begun. This is typically denoted by the execution of the contract or resale formula agreement with the current owner.

Criteria Applicants Must Meet When Buying Homes For Sale By a Land Trust Homeowner

1. Subsidy Rules: If a home is subsidized, all subsidy rules apply.
2. Student Status: “Student Status” is defined in the previous section of the Policy. Students may not purchase a house until 45 days after the execution of the contract or resale formula agreement with the current owner. However, they may apply to buy the home during this period, and if they are qualified in other respects and another qualified



buyer is not found during the period, they may buy the house after the 45 day period has expired (assuming the Land Trust has not exercised its option to purchase the home).

3. First-Time homebuyers: During the first 45 days after marketing has begun, buyers must be a first time homebuyer according to HUD's HOME rules definition, unless they are moving from residency in a CLT home and it is permissible by subsidy regulations. After this 45-day period, non-first time homebuyers may purchase the home.

4. Appropriate unit size: Refer to charts in 7.1 and 7.2. After 45 days the minimum household size restriction will be not be enforced.

Other Policy Provisions

OCHLT provides reasonable accommodations to persons with disabilities.

Application on file: Applications that meet all of the resident selection criteria in the above sections will be maintained in our database. Applicants will be notified of new opportunities as they come available and given a chance to take advantage of a period of priority for 10 days. During this period, priority is based upon need as determined by the Application Ranking System.

Citizen of USA or Registered Alien: Buyers must be either a citizen of the USA, or a registered alien.

Affordability: A buyer will be considered "able to afford" a home if they are approved for a mortgage by an OCHLT lender.

Precedence of Ground Lease over Resident Selection Policy: When Land Trust homeowners resell their homes, the requirements of the ground lease they signed with OCHLT will take precedence over the requirements of this resident selection policy if specific requirements of the two documents are determined to be in conflict.

Precedence of Subsidy Rules over Resident Selection Policy: When selling subsidized homes, a separate set of subsidy rules will be applied to applicants, in addition to the Resident Selection Policy. Subsidy rules will take precedence over the Resident Selection Policy if the two are determined to be in conflict.

Nondiscrimination: OCHLT does not discriminate on the basis of race, color, religion, sex, age, disability, familial status, national origin, marital status, sexual preference, or veteran status.

Renting Rooms: Renting rooms is permitted, but discouraged.

Co-signers: Co-signers are permitted as long as the buyer is a full-time worker.

Gift Money: Buyers may receive gift money up to \$10,000. All gifts must include a letter from gifter noting that no repayment is expected. Gifts exceeding \$10,000 will only be allowed for compelling reasons and must be accompanied by a letter of explanation.

Income Inclusions: For buyers of non-subsidized homes: when determining the applicant's household income, OCHLT will use the Income Inclusions required by HUD's HOME program, except that OCHLT will not include the income of co-signers or of persons unrelated to the owner who intend to rent rooms from the owner."



■ Exhibit I: UPFIT AND REPAIR REQUIREMENTS

Upon Resale, Lessor expects Lessee to sell the Leased Premises in substantially the same condition as when he or she purchased it. Specifically, Lessor expects that:

1. Mechanical and electrical systems will be in good working order;
2. Plumbing will be in good working order and free of stoppages or leaks;
3. Floor, wall, ceiling and countertop finishes will be clean, in good condition and free of gouges, holes and noxious odors;
4. Original appliances and fixtures will be present, clean and in good working order, or replaced with an appliance of comparable quality, in good working order;
5. There will be no evidence of pest or vermin infestations;
6. Gutters and storm water management systems will be free of debris or blockage and in good working order;
7. Landscaping, grading and drainage will be in good condition;
8. HVAC system will have been satisfactorily serviced within 60 days prior to resale;
9. A home inspection performed by a licensed home inspector will reveal no other damages.

Upon receiving a Notice of Intent to Sell from Lessee, Lessor and a professional home inspector will inspect the Leased Premises and require that Lessee makes upfits or repairs as needed so that the Leased Premises meets the standards described above before resale. Lessor may specify, at its discretion, contractors and suppliers who are eligible to provide materials and labor for required upfits and repairs.



■ Exhibit J: INVESTMENT BASIS

The Investment Basis is calculated by adding up the total amount of amortized liens against the Leased Premises which the Lessee must repay on a monthly basis, plus the amount of any downpayment provided by the lessee.

Liens that were created for loans to cover closing costs and prepaid expenses are specifically excluded from the Investment Basis calculation.

Any downpayment that the Lessee makes, including downpayments made possible by gift money, should be included in the Investment Basis.

Homebuyer(s):

Address of home purchased:

Purchase Price: _____ Date of purchase: _____

Buyer's Investment Basis:

+ _____
+ _____
+ _____
= _____



EXHIBIT D

TOWN OF CARRBORO LAND USE ORDINANCE PRIOR TO JUNE 26, 2007



Section 15-182.3 Residential Density of Major Developments in Certain Districts.
AMENDED 05/25/99

- (a) Notwithstanding the provisions of Section 15-182, when any tract of land within the R-10, R-15, R-20, and RR districts is developed under circumstances requiring the issuance of a special or conditional use permit, the maximum number of dwelling units that may be placed on that tract shall be determined in accordance with the provisions of this section.
- (b) If the development is to be served by OWASA owned water and sewer lines, then the maximum number of dwelling units for any type of residential development shall be determined by dividing the adjusted tract acreage [calculated in accordance with the provisions of subsection (c) below] by the "minimum square feet per dwelling unit" associated with the zoning district of the property to be developed as set forth in Section 15-182. (AMENDED 06/22/99)
- (c) The adjusted tract acreage shall be calculated by deducting from the gross acreage of the tract the sum total of each of the following areas that may be located within the tract in question. If an area within the tract qualifies under more than one of the following categories, then that area shall be included only within the one category that involves the most restrictive (i.e. the greatest) deduction.
 - (1) Floodways: multiply the area within a floodway by a factor of 1.0.
 - (2) Wetlands: multiply the area of designated wetlands by a factor of 0.95.
 - (3) Major Rock Formations: multiply the area of major rock formations by a factor of 0.90.
 - (4) Steep Slopes: multiply the area of land with natural ground slopes exceeding 25 percent by a factor of 0.80.
 - (5) Land traversed by high-tension electrical transmission lines (69kv or higher): multiply the area within the power easement by a factor of 0.75.
 - (6) Floodplains: multiply the 100-year floodplain by a factor of 0.5.
 - (7) Moderately steep slopes: multiply the area with natural ground slopes of between 15 and 25 percent by a factor of 0.4.
 - (8) Land traversed by underground utility lines (not within a street right of way): multiply the area within the easement (or if no easement exists, the area within ten feet on either side of the line) by a factor of 0.3.



- (d) If the development is not to be served by OWASA owned water and sewer lines, then the maximum number of dwelling units shall be determined in reference to an actual yield plan prepared by the developer in accordance with the provisions of this subsection. The yield plan shall be a conceptual layout of a single-family residential subdivision (containing proposed lots that meet the minimum lot size requirements of the district where the property is located, streets, easements, and other pertinent features) that could be developed within the tract in question in accordance with the provisions of this chapter. Although the yield plan must be drawn to scale, it need not reflect any great degree of site engineering. However, it must be a realistic layout reflecting a development pattern that could reasonably be expected to be implemented, taking into account the topography of the land and natural constraints, existing easements and encumbrances, and the applicable provisions of this chapter, particularly those relating to open space, recreational facilities, and street rights of way. In addition, the yield plan shall be prepared under the assumption that each lot will be served with an individual septic tank located on the same lot as the house it serves. The applicant shall submit evidence (in the form of a preliminary soils evaluation from Orange County or comparable information from a qualified source) that there appears to be sufficient suitable soil within each of the proposed lots to support a septic tank system serving at least a three-bedroom house. When a yield plan meeting the requirements of this subsection has been submitted, the zoning administrator shall confirm this in a letter to the developer, which letter shall indicate the maximum number of dwelling units that can be developed on the tract in accordance with this subsection.

Section 15-182.4 Residential Density Bonuses for Affordable Housing (AMENDED 05/25/99)

- (a) For purposes of this section, an affordable housing unit means a dwelling unit (i) that is offered for sale at a price that does not exceed two and a half times an amount equal to eighty percent of the annual median income level for a family of four in the Raleigh-Durham-Chapel Hill Metropolitan Statistical Area or is offered for rent at a monthly rate that does not exceed an amount equal to 12 percent of the monthly median income level for a family of four in the Raleigh-Durham-Chapel Hill Metropolitan Statistical Area, and (ii) with respect to which the developer has arranged for the affordable housing units to remain affordable as described herein for a period of not less than 100 years, commencing from the date of initial occupancy of the units, by including provisions to ensure such continued affordability in legally binding agreements (including but not limited to a ground lease, a deed restriction or other covenant) running with the unit. Such agreements shall be reviewed and approved by the Town of Carrboro prior to initial occupancy of the units. The units may not be occupied and the agreements may not be recorded or filed until such agreements are reviewed and approved by the Town of Carrboro, and (iii) that is architecturally harmonious with other units in the subject development." For the purposes of determining whether the subdivision requires a zoning permit, special use permit, or conditional use permit under Sub-



section 15-147(a), the number of units shall exclude the bonus units associated with this Section. (Amended 8/22/06)

- (b) The maximum residential density permissible within a development whose maximum density would otherwise be determined in accordance with the provisions of subsection 15-182, 15-182.1, or 15-182.3(b) shall be increased by two dwelling units for every one affordable housing unit included within the development, up to a maximum of 150% of the density otherwise allowable. To illustrate, if the maximum density of a tract would be 100 dwelling units, a developer who chose to construct 10 affordable housing units as part of the development of that tract would be allowed to construct 10 additional dwelling units that did not satisfy the "affordability" criteria set forth in subsection (a), for a total density of 120 dwelling units. In this illustration, the maximum possible density that could be achieved would be 150 dwelling units if the developer constructed at least 25 affordable housing units. (Amended 5/14/02)
- (c) Within any development that provides affordable housing units, the minimum area that must be set aside as open space to satisfy the requirements of Section 15-198 may be reduced by an amount equal to twice the land area consumed by all such affordable housing units, subject to a maximum reduction of 10 percent in the amount of open space otherwise required.
- (d) Affordable housing units constructed in accordance with this section shall be segregated from the other dwellings that do not satisfy the "affordability" criteria set interspersed throughout the development rather than isolated in one area and forth in subsection (a).
- (e) In approving a special or conditional use permit for a development that proposes to utilize the density bonus provisions of this section, the permit issuing authority shall ensure, by approval of a condition, phasing schedule, or otherwise, that affordable housing units are actually provided in accordance with the provisions of this section. Without limiting the generality of the foregoing, the permit issuing authority may impose a condition specifying that units may not be issued until the corresponding affordable housing units are constructed and offered for sale or rent for an amount that is consistent with the definition set forth in subsection (a).
- (f) If, by using the affordable housing density bonus provided for in this section, the number of dwelling units within a development increases to the point where the type of permit required for the project based on the number of units would otherwise change from a zoning to a special use permit or from a special use to a conditional use permit in accordance with the provisions of Section 15-147, the developer may nevertheless seek approval for the project under the permit process that would be applicable if no density bonus was sought under this section. (Amended 5/14/02)

Art. XII DENSITY AND DIMENSIONAL REGULATIONS



- (g) As provided in subsection 15-92.1 (d), developments that use the affordable housing density bonus provisions of this section may be entitled to relief from the setback requirements under some circumstances. (Amended 5/14/02)

Section 15-183 Minimum Lot Widths.

- (a) No lot may be created that is so narrow or otherwise so irregularly shaped that it would be impracticable to construct on it a building that:
 - (1) Could be used for purposes that are permissible in that zoning district; and
 - (2) Could satisfy any applicable setback requirements for that district.
- (b) Without limiting the generality of the foregoing standard, the following minimum lot widths are recommended and are deemed presumptively to satisfy the standard set forth in subsection (a). The lot width shall be measured along a straight line connecting the points at which a line that demarcates the required setback from the street intersects with lot boundary lines at opposite sides of the lot. (AMENDED 5/26/81; 12/7/83; 2/4/86; 11/14/88; 05/15/90; 04/16/91)