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MASTER DECLARATION OF
COVENANTS, CONDITIONS AND
RESTRICTIONS FOR THE COLONY *(C Nod)*

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STATE OF NORTH CAROLINA
COUNTY OF MECKLENBURG

MASTER DECLARATION OF
COVENANTS, CONDITIONS AND
RESTRICTIONS FOR THE COLONY

THIS MASTER DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS (the "Declaration") is made October 16, 2002, by GATEWAY HOMES IV, LLC, a North Carolina limited liability company (hereinafter referred to as "Declarant").

STATEMENT OF PURPOSE

Declarant is the owner of real property in Mecklenburg County, North Carolina, which is more particularly described on Exhibit A which is attached (the "Property"). Declarant desires to create thereon a residential community of single-family attached residential dwellings and a retail-attached structure to be known as The Colony. The residential dwellings shall consist of townhomes and condominiums and the retail structure shall consist of a condominium.

Declarant desires to insure the attractiveness of the subdivision and to prevent any future impairment thereof; to prevent nuisances; to preserve, protect, and enhance the values and amenities of all properties within the subdivision; to provide for the maintenance and upkeep of the lawns, and to provide other services as detailed herein; and to this end, desires to subject the Property to the covenants, conditions, restrictions, easements, assessments, charges, liens and other obligations hereinafter set forth, each and all of which is and are for the benefit of said property and each owner thereof.

Declarant has deemed it desirable, for the efficient preservation, protection, and enhancement of the values and amenities in said subdivision, to create an organization to which will be delegated and assigned the powers of maintaining and administering said areas and administering and enforcing the covenants and restrictions and collecting and disbursing the assessments and charges hereinafter created.

Declarant has incorporated or will incorporate under North Carolina law THE COLONY AT NODA ASSOCIATION, INC. (the "Association") as a non-profit corporation for the purpose of exercising and performing the aforesaid functions.

Subsequently to the recordation of this Declaration, the Declarant intends to record the Declaration of The Colony Lofts Condominiums (the "Lofts Condominium

Declaration"), which shall serve to create a residential condominium upon a portion of the Property and the Declaration of Shops at The Colony Condominium (the "Shops Condominium"), which shall serve to create a retail condominium upon a portion of the Property. The Lofts Condominium Declaration and Shops Condominium Declaration shall set forth in detail items typical to a condominium, such as common element ownership and maintenance, as well as the dues structure for the two condominiums. The condominiums shall be specifically governed by the Lofts Condominium Declaration and the Shops Condominium Declaration. It is the intent of this Declaration, however, that the condominiums be considered part of the subdivision, subject to the covenants, conditions, and restrictions set forth herein, participating in both the burdens and benefits of ownership within the Subdivision.

Declarant, by this Declaration, does hereby declare that all of the Property described on Exhibit A hereof is and shall be held, transferred, sold, conveyed, and occupied subject to the covenants, conditions, restrictions, easements, assessments, charges, and liens set forth in this Declaration which shall run with the real property and be binding on all parties owning any right, title, or interest in said real property or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

ARTICLE I

DEFINITIONS

Section 1.1. "Articles of Incorporation" shall refer to the articles of incorporation of the Association, as filed with the North Carolina Secretary of State.

Section 1.2. "Assessments" are any dues or other monies owed the Association pursuant to the terms of this Declaration. There are six (6) kinds of Assessments:

- (a) Annual Assessments are those levied against each Owner equally, in order to pay for normal activities of the Association.
- (b) General Special Assessments are those levied against each Owner equally, in order to pay for extraordinary activities of the Association.
- (c) Specific Special Assessments are those levied against one or more individual Owners on account of violations by those Owner(s) of the terms of this Declaration, or on account of expenses incurred by the Association as a

result of the activity or inactivity of the Owner(s).

(d) Lofts Condominium Assessments are those levied against the Lofts Condominium Units, as set forth in more detail in the Lofts Condominium Declaration.

(e) Shops Condominium Assessments are those levied against the Shops Condominium Units, as set forth in more detail in the Shops Condominium Declaration.

(f) Townhome Assessments are those levied against the single-family attached dwelling units as provided herein.

Section 1.3. "Association" shall mean and refer to THE COLONY AT NODA ASSOCIATION, INC., a North Carolina non-profit corporation, its successors and assigns.

Section 1.4. "Board of Directors" shall mean and refer to the Board of Directors of the Association.

Section 1.5. "Building" shall mean a Condominium Building or a Townhome Building. "Building Pad" shall mean a lot on a recorded plat which shall be converted into a Condominium Building or a lot upon which a Townhome Building is erected.

Section 1.6. "Bylaws" shall mean the bylaws of the Association, as amended.

Section 1.7. "Common Area" shall mean all portions of the Property which are deeded to the Association for the common enjoyment of all Members.

Section 1.8. "Condominium" shall mean developments created as a condominium by virtue of the Lofts Condominium Declaration and the Shops Condominium Declaration, including the Condominium Units and the common elements, as defined in the Lofts Condominium Declaration and the Shops Condominium Declaration.

Section 1.9. "Lofts Condominium Association" shall mean The Colony Lofts Condominium Homeowners Association, Inc. pursuant to the "Declaration of the Colony Lofts Condominium", charged with the management, administration and maintenance of the residential Condominium.

Section 1.10. "Shops Condominium Association" shall mean the Shops at the Colony Owners Association, Inc. pursuant to the "Declaration of Shops at The Colony Condominium", charged with the management, administration and maintenance of the retail Condominium.

Section 1.11. "Lofts Condominium Declaration" means that certain "Declaration of The Colony Lofts Condominium", to be filed by Declarant in the Office of the Register of Deeds for Mecklenburg County, as amended from time to time.

Section 1.12. "Shops Condominium Declaration" means that certain "Declaration of Shops at The Colony Condominium" to be filed by Declarant in the Office of the Register of Deeds for Mecklenburg County, as amended from time to time.

Section 1.13. "Townhome Building" means any structure made up of contiguous Townhome Units.

Section 1.14. "Townhome Unit" shall mean and refer to one individual living space located on a Townhome Lot each Townhome Unit being attached to other Townhome Units. Contiguous Units make up a "Townhome Building".

Section 1.15. "Townhome Lot" shall mean and refer to any numbered parcel of land upon which is or may be placed one single-family attached townhome dwelling, with delineated boundary lines, appearing on plat or maps of the subdivision.

Section 1.16. "Declarant" shall mean and refer to Gateway Homes, Inc. and its successors and assigns.

Section 1.17. "Dwelling" shall mean any single family residential dwelling unit erected upon any Townhome Lot.

Section 1.18. "Lot" shall mean any kind of residential building lots that exist in the Subdivision, plus the units in the residential Condominium and the retail Condominium. In the event any Lot is permissibly subdivided, increased or decreased in size by resubdivisions, through recordation of new subdivision plats, by deed or otherwise, each lot resulting from such subdivision or resubdivisions shall thereafter constitute a Lot for the purpose of this Declaration.

Section 1.19. "Single Family Lot" shall mean and refer to any parcel of land, fronting on a public street, upon which is or may be placed one single-family attached townhome dwelling, with delineated boundary lines, appearing on plat or maps of subdivision recorded with Mecklenburg County.

Section 1.20. "Shops Condominium Unit" shall mean any retail condominium unit created by the Declaration of Shops At The Colony Condominium.

Section 1.21. "Condominium Unit" or "Condominium Lots" shall mean any residential dwelling unit or retail unit of any condominium erected and established on the Property, each Condominium Unit being attached to other Condominium Units. Contiguous Condominium Units make up a "Condominium Building."

Section 1.22. "Residential Condominium Unit" or "Lofts Condominium Unit" shall mean any residential dwelling unit created by "Declaration of The Colony Lofts Condominium".

Section 1.23. "Retail Condominium Unit" or "Shops Condominium Unit" shall mean any retail unit created by the "Declaration of Shops At The Colony Condominium".

Section 1.24. "Condominium Associations" shall mean both the Lofts Condominium Association and the Shops Condominium Association.

Section 1.25. "Condominium Declarations" shall mean both the Lofts Condominium Declaration and the Shops Condominium Declaration.

Section 1.26. "Map" shall mean and refer to any certain subdivision map(s) which shows the Property and is or shall be recorded in the Mecklenburg County Registry.

Section 1.27. "Member" shall mean and refer to every person or entity who is an Owner and holds membership in the Association.

Section 1.28. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any Lot which is a part of the Property, including contract sellers, but excluding those having such interests merely as security for the performance of an obligation. Owners of Condominium Units shall be deemed to be

"Owners."

Section 1.29. "Property" shall mean and refer to the property described on Exhibit A.

Section 1.30. "Subdivision" shall mean The Colony subdivision, which consists of and is identical to the Property.

Section 1.31. "Unit" shall mean a Condominium Unit or Townhome Unit, or both.

ARTICLE II

PROPERTY SUBJECT TO THIS DECLARATION AND WITHIN THE JURISDICTION OF THE ASSOCIATION

Section 2.1. The Property.

The real property which is and shall be held, transferred, sold, conveyed, and occupied subject to this Declaration, and within the jurisdiction of the Association is located in Mecklenburg County, North Carolina, and is described on Exhibit A attached hereto.

Section 2.2. Annexation of Additional Property.

Declarant shall have the right, so long as it owns any Lot, to add additional property to the Property which is the subject of this Declaration, provided that such additional property is physically contiguous to the Property. Such additional property shall be added by recordation of a Supplemental Declaration identifying such contiguous property.

In the event the Declarant adds additional property to the Property which is the subject of this Declaration, the Declarant shall have the absolute right, all other provisions of this Declaration notwithstanding, to use any portion of the Property for roadway or other access to the property being added. This right shall include, but not be limited to, the right to use a platted lot(s) for vehicular and/or pedestrian access to the additional property.

Section 2.3. Conveyance or Transfer of Common Area.

The Common Area may be conveyed and/or mortgaged by the Association, provided that such conveyance and/or mortgage is approved by at least two-thirds of the Members.

If ingress or egress to any Unit is through or over any part of the Common Area, then any conveyance of said Common Area shall be made subject to an express easement in favor of that Owner and that Unit.

ARTICLE III

MEMBERSHIP CLASSIFICATIONS; VOTING RIGHTS; DUES OBLIGATIONS

Section 3.1. Membership.

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

Section 3.2. Classes of Membership.

The voting rights of the membership shall be appurtenant to the ownership of the Lots. There shall be two classes of membership, with respect to voting rights and two classes of membership with respect to dues.

I. Voting Rights

(a) Class A Membership. Every Owner of a Lot, other than the Declarant shall be deemed to be a Class A Member. Each Class A Member shall be entitled to one vote per Lot owned. When more than one person owns an interest (other than a leasehold or a security interest) in any Lot, all such persons shall be Members and the voting rights appurtenant to said Lot shall be exercised as they, among themselves, determine, but in no event shall more than one (1) vote be cast with respect to any one (1) Lot not owned by the Declarant.

(b) Class B Membership. The Declarant shall be the Class B Member. The Declarant shall be entitled to four (4) votes for each Lot owned by it. The Class

B Membership shall cease to exist and shall be converted to Class A Membership (as appropriate) upon the happening of either of the following events, whichever occurs earlier:

- (1) within 120 days after the date that 75% of the Lots are conveyed to Class A Members; or
- (2) five years from the date of this Declaration, or
- (3) written notice of consent to such conversion by the Declarant.

The Declarant rights as Class B Member are not intended to apply to voting within the Lofts Condominium Association or the Shops Condominium Association, but only to voting rights within the Association. Voting rights within the Lofts Condominium Association or the Shops Condominium Association are more specifically set forth in the Lofts Condominium Declaration and the Shops Condominium Declaration.

II: Dues Obligations

For purposes of Paying Dues, Class A Members shall be divided into the following subclasses:

1. Owners of Single Family Townhome Lots shall pay Level A1 Dues;
2. Owners of Lofts Condominium Units shall pay Level A2 Dues; and
3. Owners of Shops Condominium Units shall pay Level A3 Dues.

(a) **Basic Dues** Basic Dues shall be the pro-rata share of all expenses incurred related to the maintenance of the Common Area, any portions of the Property that are shared by all Owners and maintenance related to the Shops Condominium Association. Basic Dues shall include the administrative costs of maintaining and operating the Association. Basic Dues shall be determined by dividing the total of such expenses by the total number of Lots on the Property (except as to the Lofts Condominium Units, which shall be based on the square footage of each Loft Condominium Unit, as set forth in more detail in the Lofts Condominium Declaration and the Owners of Shops Condominium Units shall cumulatively pay 2.70% of the total of the Basic Dues, which 2.70% shall be prorated among the Owners of the Shops Condominium Units.) This provision of the Declaration cannot be modified or terminated without the written consent of the Declarant.

(b) Level A1 Dues: Level A1 Dues shall be Basic Dues and the pro-rata share of all expenses related to the Single Family Townhome Lots. For purposes of determining such pro-rata share, the Level A1 Dues shall be determined by dividing the total of such expenses related by the total number of Single Family Townhome Lots on the Property.

(c) Level A2 Dues: Level A2 Dues shall be Basic Dues and the pro-rata share of all expenses related to the Lofts Condominium Association, as set forth in the Lofts Condominium Declaration. For purposes of determining such pro-rata share, the Level A2 Dues shall be determined by dividing the total square footage in each Condominium Unit by the total square footage of all Residential Condominium Units, as set forth in the Lofts Condominium Declaration. Level A2 Dues may be further subdivided to provide for payment of Common Elements and Limited Common Elements (as defined in the Lofts Condominium Declaration) as appropriate under the Lofts Condominium Declaration. Until the Lofts Condominium Declaration has been recorded in the Mecklenburg County Public Registry, Level A2 Dues shall be the same amount as the Level A1 Dues for each Building Pad shown on a recorded plat.

(d) Level A3 Dues: Level A3 Dues shall be the prorata share of 2.70% of the Basic Dues rate and the pro-rata share of expenses related to the Shops Condominium Association, as set forth in the Shops Condominium Declaration not provided for herein. For purposes of determining such pro-rata share, the Level A3 Dues shall be determined by dividing the total square footage in each Retail Condominium Unit by the total square footage of all Retail Condominium Units, as set forth in the Shops Condominium Declaration. Level A3 Dues may be further subdivided to provide for payment of Common Elements and Limited Common Elements (as defined in the Shops Condominium Declaration) as appropriate under the Shops Condominium Declaration. Until the Shops Condominium Declaration has been recorded in the Mecklenburg County Public Registry, Level A3 Dues shall be the same amount as the Level A1 Dues for each Building Pad shown on a recorded plat.

(e) Special Note Concerning Payment of Dues by Owners of Condominium Units: Payment by Owners of Lofts Condominium Units and the Shops Condominium Units of the appropriate dues to the Lofts Condominium Association and the Shops Condominium Association respectively may satisfy said Owners obligations to pay dues under this Declaration if the Shops Condominium Association and Lofts Condominium Association set the dues

structure to include both sets of dues.

(f) Class B Membership Dues. The Class B Member shall not pay dues for each Lot owned by it but shall have the right to pay any shortfall between the actual Association expenses and the actual revenues raised from the other Members. The Class B Member shall at all times have the right to satisfy its obligations hereunder by providing services in-kind for the Association, such services to have a value mutually agreed upon by the Association and the Declarant.

ARTICLE IV

PROPERTY RIGHTS

Section 4.1. Owner's Easement of Enjoyment.

Every Owner shall have a general right and easement of enjoyment of his own Lot and the Common Area which is deeded to the Association, subject to the provisions of this Declaration.

Section 4.2. Limitations on Easement of Enjoyment as to Townhome Lots.

(a) Reservation of Easements to Other Owners. All Owners of a Townhome Unit in a particular Townhome Building shall have a permanent easement and right to enter upon the property of all other Owners of Townhome Units within that same Townhome Building for purposes of pedestrian traffic and moving materials from the rear of the Townhome Building to the front and vice-versa. No Owner shall build any walls, fence or other improvements or take any action whatsoever which in any way restricts the ability of the other Owners within the same Townhome Building to exercise the rights reserved herein.

(b) Reservation of Easements to Declarant, the Association and its Assignees or Maintenance Contractors. The Declarant, the Association, their successors and assigns and any third party maintenance contractor hired by them shall have and hereby do reserve a permanent easement and right at any time to enter onto the Townhome Lot and/or into a Townhome Unit of any Owner, as is reasonably necessary for purposes of undertaking any maintenance or repair which is the responsibility of the Association hereunder, including but not limited to, maintenance and repair of any structure, roofs, common walls, exterior improvements, driveways, planting and maintaining landscape improvements and

installing and maintaining drainage improvements. This right includes, but is not limited to the right to plant, water and cut grass, and to grade landscape to promote proper drainage.

(c) Reservation of Easements for Utility Installation, Service and Maintenance. The Declarant, the Association their successors and assigns and any third party contractor hired by them, and any public utility provider, shall have and hereby do reserve a permanent easement and right to enter onto the Townhome Lot and/or into a Townhome Unit of any Owner, as is reasonably necessary for purposes of installing, servicing and maintaining all utilities provided to the Units including, but not limited to cable television, gas, electric power, telephone, HVAC, and water and sewer services.

Section 4.3. Limitations on Easement of Enjoyment as to All Lots.

(a) Reservation of Five Foot Side-Line and Ten-Foot Rear-Line Easements. The Declarant, the Association their successors and assigns and any third party contractor hired by them, shall have and hereby do reserve a permanent five-foot right of way along the side lines and a permanent ten-foot right of way along the rear lines of each Lot and Common Area of the Condominium Units (other than portions of Lots on which common walls have been built, or Condominium Units) for purposes of the installation and maintenance of poles, lines, conduits, pipes and other equipment necessary or useful for furnishing electrical power, gas, water, sewer, storm drainage, telephone service and other utilities and all walls, columns, lamps and entry ways appurtenant to the Common Area.

(b) Restrictions on Improvements or Interference with Easements. No improvement shall be built in such a way, and no other action shall be taken by any Owner, which in any way restricts or limits the easement rights granted and reserved herein.

(c) Reservation of Easements for Encroachments. Declarant, for itself and for its successors and assigns, reserves a permanent right and easement over all of the Lots for encroachments of roofs, eaves, trim and molding, siding, stairways, columns and any other integral components of structures, the walls of which are located on a common boundary line between adjoining Lots. This right and easement shall be for the continuing existence of any such encroachments; further, there shall be a perpetual right and easement of Owners and their employees, agents and representatives, to go upon adjoining property for the

purpose of repair, maintenance and reconstruction of any structure located on the Lot of such Owners.

(d) No Entry Into Residences. Nothing in this section shall be interpreted to grant or reserve to any Owner, other than the Declarant or the Association as specifically set forth herein, the right to enter into the residence of any other Owner under any circumstances whatsoever.

(e) Time Warner Cable. Time Warner Cable shall have exclusive cable rights upon the Property and to all cable lines installed by Declarant upon the Property. This provision of the Declaration cannot be modified or terminated without the written consent of the Declarant as long as Declarant is an Owner of a Lot.

Section 4.4. Easements Relating to the Condominiums

(a) Reservation of Easements Across Common Areas. The Declarant, hereby grants an easement across, on, over and to the Common Area for the benefit and enjoyment of the Owners of each Condominium Unit. Such Owners shall be entitled to use and enjoy the Common Area, subject to the limitations of the rules and regulations promulgated by the Association. Provided, however, that such rights shall only be extended to members in good standing of the Condominium Associations.

(b) Reservation of Easements Across Common Elements of the Condominiums. The Declarant, hereby grants an easement across, on, over and to the common elements of the Shops Condominium Association for the benefit and enjoyment of the Owners of the Single Family Townhome Lots and the Residential Condominium Units. Such Owners shall be entitled to use and enjoy the common elements of the Shops Condominium Association, subject to the limitations of the rules and regulations promulgated by the Shops Condominium Association. By way of example, but not limitation, ownership of a Single Family Townhome Lot or Residential Condominium Unit shall entitle said Owners to use the unassigned parking facilities of the Shops Condominium Association. Provided, however, that such rights shall only be extended to members in good standing of the Association.

ARTICLE V

COVENANT FOR MAINTENANCE ASSESSMENTS

Section 5.1. Creation of the Lien and Personal Obligation of Assessments.

The Declarant, for each Lot within the Property, hereby covenants and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) Annual Assessments or charges (2) General Special Assessments for capital improvements and (3) Specific Special Assessments, as determined by the Association, such assessments to be established and collected as hereinafter provided. Any such assessment or charge, together with interest, costs, fines and reasonable attorney's fees shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment or charge is made. Each such assessment, together with interest, costs, fines and reasonable attorney's fees shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment or charge fell due.

Section 5.2. Purpose of Assessments.

- (a) The Assessments levied by the Association shall be used to promote the recreation, health, safety and welfare of the residents of the Property and in particular for the maintenance and improvement of the Common Area.
- (b) The Assessments levied by the Association may also be used to provide insurance for the Common Area, the parking facility of the Shops Condominium, and the Townhome Buildings.
- (c) The Assessments shall also be used to pay the cost of maintaining the parking facility and other expenses related to the Shops Condominium. Such payment shall be considered part of the costs of maintaining the Common Area.
- (d) The Assessments shall also be used for maintenance and service to the Single Family Townhome Lots including, but not limited to, landscaping, exterior maintenance of the dwellings, front porches, rails and roofs of the Single Family Townhome Lots.
- (e) All monies collected by the Association shall be treated as the separate property of the Association, and such monies may be applied by the Association

to the payment of any expense of operating and managing the Property, or to the proper undertaking of all acts and duties imposed upon it by virtue of this Declaration, the Articles of Incorporation and the Bylaws of the Association. As monies for any assessment are paid to the Association by any Owner, the same may be commingled with monies paid to the Association by the other Owners. Although all funds and common surplus, including other assets of the Association, and any increments thereto or profits derived therefrom, shall be held for the benefit of the Members of the Association, no Member of the Association shall have the right to assign, hypothecate, pledge or in any manner transfer his membership interest therein, except as an appurtenance to his Lot, by whatever means, and the Association shall not be required to account to such Owner for any share of the fund or assets of the Association, or which may have been paid to the Association by such Owner, as all monies which any Owner has paid to the Association shall be and constitute an asset of the Association which may be used in the operation and management of the Property.

(f) The foregoing notwithstanding, no Assessment of any kind may be used for the purpose of filing or pursuing of any legal action of any sort whatsoever (including but not limited to lawsuits, arbitrations, administrative proceedings, and mediations) unless 1) such use is approved by an affirmative vote of two-thirds of all votes entitled to be cast by all Owners (including the Declarant) and 2) the approval of the Declarant for so long as the Declarant owns any Lot (unless such action is against the Declarant, in which case this subsection shall not apply.) Such limitation shall not apply, however, and Assessments may be used, for the bringing of any action to collect dues or to enforce the use restrictions set forth in this Declaration, or for the defense of any action brought against the Association.

Section 5.3. Maximum Annual Assessment.

- (a) Until January 1 of the year immediately following the year in which conveyance of the first Lot to an Owner is made, the Annual Assessment for Level A1 Dues shall be \$1,223.80 per year;
- (b) The Level A2 Dues are set forth in more detail in the Lofts Condominium Declaration. Until the Lofts Condominium is formed by the recording of the Lofts Condominium Declaration and amendments thereto, the Level A2 Dues shall be the same amount as Level A1 dues for each Lot that does not qualify as a Single Family Townhome Lot.

(c) The Level A3 Dues are set forth in more detail in the Shops Condominium Declaration. Until the Shops Condominium is formed by the recording of the Shops Condominium Declaration and amendments thereto, the Level A3 Dues shall be the same amount as Level A1 Dues for each Lot that does not qualify as a Single Family Townhome Lot.

★ (d) The ~~Annual Assessments~~ shall be established by the Board of Directors on an annual basis. The Annual Assessments may be increased by the Board of Directors, without approval by the membership, by a percentage not to exceed the sum of ten percent (10%) per year. Any annual increase in excess of ten percent (10%) shall require approval by a vote of two-thirds (2/3) of each class of Members who are voting in person or by proxy, at a meeting duly called for this purpose. The foregoing notwithstanding, no approval shall be required for any increase of the dues which are directly attributable to insurance premiums on Units and/or Buildings.

(e) The Board shall have the right to reduce the Annual Assessments at any time.

Section 5.4. Capital Contribution.

Every Owner other than the Declarant shall likewise be responsible for an initial capital contribution in the amount of one month of dues. Such capital contribution shall be due upon transfer of the title to any portion of the Property to the Owner from Declarant or another Owner, and shall be maintained and applied for operating/working capital expenses.

Section 5.5. Notice And Quorum For Any Action Authorized Under Sections 5.3.

Written notice of any meeting called for the purpose of taking any action authorized under Section 5.3 hereof shall be sent to all Members ~~not less than fifteen (15) days nor more than sixty (60) days~~ in advance of the meeting. ~~At the first such meeting called,~~ the presence of members or of proxies entitled to cast sixty percent (60%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the ~~required quorum at the subsequent meeting shall be one-half (1 / 2) of the required quorum at the preceding meeting.~~ No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 5.6. Rate Of Annual Assessment.

Both Annual and General Special Assessments must be fixed at a uniform rate for all Lots within each subclass and shall be collected on a not more often than a monthly basis.

Section 5.7. Date Of Commencement Of Annual Assessments; Due Date.

The Annual Assessments provided for herein shall be due in full on January 1 of each calendar year (other than the first year in which such Assessments are levied, in which case, such are due immediately upon assessment), and shall be payable, as determined by the Association in its absolute discretion, on a monthly, quarterly or annual basis on the first business day of each calendar month, quarter or year. The first such annual assessment shall be adjusted according to the number of days remaining in the calendar year after conveyance of the first Lot to an Owner.

General and Specific Special Assessments shall be due immediately when levied by the Association, or at such other time determined by the Association. The Special Assessments may be levied by the Association in an amount up to \$200.00 annually without the approval of the Membership.

At least thirty (30) days in advance of each annual assessment period, the Board of Directors shall fix the amount of the annual assessment against each Lot for the next year and at least thirty (30) days before January 1 shall send written notice of such fixed assessment to every Owner subject thereto. The Association shall, upon demand, and for a fee to be determined by the Association, furnish a certificate signed by an officer of the Association setting forth whether the assessment on a specified Lot has been paid.

Failure by any Owner to pay any dues in a timely fashion shall give the Association the right to accelerate all dues for the year in which such deficiency occurs. Upon notice of such acceleration, the delinquent Owner shall immediately be obligated to pay all remaining dues for that year.

Section 5.8. Effect Of Nonpayment Of Assessments; Remedies Of The Association.

Any Assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the highest rate allowed by law. In addition to such interest charge, the delinquent Owner shall also pay such late charges or fines as may have been

theretofore established by the Board of Directors. The Association may bring an action at law against the Owner personally obligated to pay the same or foreclose the lien created herein against the property in the same manner as prescribed by the laws of the State of North Carolina for the foreclosure of deeds of trust, and interest, late payment fees, costs and reasonable attorney's fees for representation of the Association in such action or foreclosure shall be added to the amount of such assessment. No Owner may waive or otherwise escape liability for the assessments provided for herein by abandonment of his Lot; nor shall damage to or destruction of any improvement on any Lot by fire or other casualty result in abatement or diminution of the assessments provided for herein.

Provided, however, that an Owner's failure to pay any assessment shall not constitute a default under any mortgage given by that Owner, unless expressly agreed to by the Owner in writing.

Section 5.9. Exempt Property.

The assessments, charges and liens created under this Article V shall not apply to any Lot the title to which is vested either in any first mortgagee subsequent to foreclosure or in the Secretary of Housing and Urban Development or the Administrator of Veterans Affairs or any other state or federal governmental agency which acquires title by reason of such agency's guarantee or insurance of a foreclosed mortgage loan; provided, however, that upon the resale of such property by such first mortgagee or such governmental agency the assessment herein provided shall again commence and accrue and shall be fully applicable to such Lot upon the conveyance to any subsequent Owner. All land which shall be dedicated to and accepted by a local public authority, and all land granted to or used by a utility company, and property owned by a nonprofit organization exempt from taxation under the laws of the State of North Carolina shall be exempt from the assessments and charges created herein.

Section 5.10. Subordination to the Lien of First Mortgages.

The lien of the assessments provided for herein shall be subordinate to the lien of any first priority deed of trust or first mortgage. The sale or transfer of any Lot shall not affect the assessment lien; provided, however, the sale or transfer of any Lot which is subject to any first deed of trust or first mortgage, pursuant to a foreclosure thereof or under a power of sale, or any proceeding in lieu of foreclosure thereof, shall extinguish the lien of such assessment as to payments which became due prior to such sale or transfer.

Section 5.11. Application of Payments.

In the event an Owner pays any funds after the imposition of any fines, or the incurrence of collection fees, the funds paid shall be applied first to any fines levied, then to any other late fees, if any, then to any special assessment, if any, then to the Annual Assessments, if any.

ARTICLE VI

ARCHITECTURAL CONTROL

No improvement of any sort shall be commenced, erected, or maintained upon the Property or any Lot, nor shall any exterior addition to or change or alteration made to any Dwelling, Building or Unit (including but not limited to, color or painting or the exterior and type of exterior finish) without the express approval of the Declarant, so long as the Declarant owns any Lot, and thereafter, by the Board of Directors of the Association. In the event an Owner desires to erect an improvement, or alter the exterior of any Dwelling, Building or Unit, the Owner shall submit to the Declarant (or the Board, as appropriate), two copies of the plans and specifications showing the nature, kind, shape, height, materials, and location of the improvements. The Declarant shall have absolute discretion as to the approval or denial of any improvements. The Board of Directors shall base its approval or denial upon reasonable consideration as to harmony of external design and location in relation to surrounding structures and topography. Absent such approval, the proposed improvement may not be commenced.

In the event an Owner of any Lot shall make unauthorized changes to any Dwelling, Building or Unit and the improvements situated thereon in a manner unsatisfactory to the Declarant (or the Board of Directors) the Declarant (or the Board of Directors) shall have the right, through its agents and employees, to enter upon said Lot, or into said Dwelling, Building or Unit, and to repair, maintain and restore the Lot, or the exterior of the Dwelling, Building or Unit so that the improvement and/or violation no longer exists. The cost of such action, including materials and labor, and any other costs or attorney's fees incurred in the enforcement of the rights under these provisions shall be considered a Specific Special Assessment against that Owner(s) and said Lot(s).

Construction of new structures or improvements only shall be permitted, it being the intent of this section to prohibit the moving of any existing structure or improvement onto any Lot Dwelling, Building or Unit.

ARTICLE VII

MAINTENANCE & SERVICE

Section 7.1. Maintenance and Service by the Association.

I. Maintenance and Service Obligations Benefitting the Townhome Lots Exclusively

(a) Townhome Units. The Association shall provide ordinary care, maintenance and repair services related to the maintenance, upkeep, painting and repair of all roofs, common walls, and Townhome Unit exteriors, including trim, siding and railings, as well as all exterior front doors. The Association shall provide all necessary maintenance and upkeep as it determines in its discretion is necessary to maintain the aesthetic quality of the exterior of each Building. Provided, however, that the Association shall provide for all exterior wood, including trim and siding and all exterior front doors to be painted at least every five (5) years.

(b) Driveways & Walkways. The Association shall provide ordinary care maintenance on and for every driveway and walkway serving any Townhome Lot.

II. Maintenance and Service Obligations Benefitting the Condominium Units Exclusively.

The Association shall not provide maintenance or service to the Condominium Units, but maintenance and services shall be provided through the Lofts Condominium Association and the Shops Condominium Association, as set forth in more detail in the respective Condominium Declarations.

III. Maintenance Obligations Benefitting All Lots

The Association shall provide ordinary care and maintenance for the Common Area. Specifically, the Association shall care for and maintain the entryways to the Property and improvements thereto, and such care and maintenance shall be deemed to benefit all Lots.

IV. Maintenance Easements

In order to enable the Association to accomplish its maintenance obligations as set forth in this Article, permanent rights and easements over all Lots, and into all Units, Buildings and Dwellings, have been reserved to the Association.

Section 7.2. Maintenance by Owners and the Association:

(a) Townhome Lots. ~~Each Owner of a Townhome Lot shall be responsible for the maintenance, repair or replacement of the following items located on his Lot: glass surfaces; window and door screens, patios; wooden decks or any part thereof including railings, supports and steps; awnings; fences; all landscape improvements and exterior alterations not maintained by the Association and approved by the Declarant pursuant to the provisions herein; provided, however, the external appearance of such maintenance, repairs or replacement shall be subject to the regulation and control of the Declarant or the Association as provided in this Declaration.~~

(b) Condominium Units. Each Owner of a Condominium Lot shall be responsible for the maintenance obligations not assumed by the Lofts Condominium Association or the Shops Condominium Association, as set forth in more detail in the respective Condominium Declarations.

(c) Association. Should an Owner fail to discharge his maintenance, repair or replacement responsibilities in a reasonable and prudent manner to standards harmonious with that of other Lots in the Subdivision, as determined by the Declarant in its discretion or, after the Declarant owns no portion of the Property, by the Association, then the Declarant (or Association, if appropriate) in its discretion may demand that the Owner promptly comply with the same by mailing a notice thereof to the Owner at his address, specified in his contract to purchase such Lot and by posting such notice on the Lot. If the Owner has not complied therewith within five (5) days thereafter, the Association shall have the right to cause such maintenance, repair or replacement to be performed and to charge the cost thereof as a part of and in addition to the regular assessment attributable to the Lot and provided for in this Declaration, notwithstanding any provision to the contrary contained herein. Should an Owner fail to pay any charge billed in accordance with this subparagraph (d) within fifteen (15) days of such billing, then the Association shall have the right to levy fines and to claim a lien against the Lot and to foreclose such lien, all as provided for in this Declaration. No such entry as provided herein shall be deemed a trespass.

After the completion of construction of a Townhome Unit and the conveyance of that Townhome Unit by Declarant to an ultimate purchaser, if all or any portion of a Townhome Unit is damaged or destroyed by fire or other casualty, it shall be the duty of the Association, with all due diligence, to repair or reconstruct such Unit using the same design plans as used in the original construction of the Townhome Unit. If such plans are not reasonably available, the Association shall rebuild the Unit in substantially the same style, configuration, and interior and exterior appearance as it existed immediately prior to the casualty.

Reconstruction shall be undertaken within thirty (30) days after receipt of the insurance funds, and shall be completed within one hundred eighty (180) days after the damage occurs, unless prevented by causes beyond the control of the Association.

Section 7.3. General Maintenance Provisions.

- (a) In the event that the need for maintenance, repair or replacement is caused through the willful or negligent act of the Owner, his family, guests or invitees, the cost of such maintenance, repair or replacement shall be added to and become a part of the assessment to which such Lot is subject, notwithstanding any provisions to the contrary contained herein.
- (b) The Association shall have the power to enforce the obligations contained in this Article VII through the levy of General and/or Specific Special Assessments.

ARTICLE VIII

USE RESTRICTIONS: TOWNHOME LOTS

Section 8.1. Residential Use.

All Townhome Lots shall be used for single family residential purposes only. No structure erected, altered, placed or permitted to remain on any Townhome Lot shall exceed two and one-half stories in height. A private garage for each Townhome Lot for not more than two cars and other accessory structures customarily incidental to the use of the Lot may be erected if approved by the Association.

Section 8.2. Setbacks.

No Building shall be located nearer to the front property line or any side street line than the building setback line as shown on the recorded maps of the Subdivision. No building shall be located nearer any side lot line than the applicable zoning ordinance shall allow. Deviations from building line requirements not in excess of ten percent (10%) thereof shall not be construed as a violation of the building line requirements as long as such deviation does not violate any local ordinance or zoning.

Section 8.3. Animals and Pets.

No animals of any kind shall be kept on any Townhome Lot except generally accepted household pets. No swine or goat or cattle of any kind shall be permitted. No more than two (2) household pets shall be permitted per Townhome Lot. No pets shall be kept for commercial use or sale, and no more than three pets over the age of six months shall be permitted at any time. Birds shall be confined in cages. No pet shall be permitted to remain outdoors for any extended period of time without supervision of an Owner, it being the intent of this restriction to prohibit the leaving of pets outdoors while the Owner is absent from the Dwelling. In no instance shall household pets become a nuisance to other Owners, or infringe upon the property rights of other Owners. Owners shall abide by all leash laws and shall remove and properly dispose of any waste deposited by their pet(s) on any Common Area, any right-of-way, street, parking lot, or Lot of another Owner.

Section 8.4. Signs

~~No signs of any type or kind shall be erected, placed or permitted to remain upon or above any Townhome Lot or Common Area with the exception of a single "For Sale" or "For Rent" sign, which sign shall not exceed two feet by three feet in dimension and shall refer only to the premises on which displayed, there being only one sign to a Lot.~~

Notwithstanding the above, Declarant may erect and place signs of any size or shape on any unsold Townhome Lot or the Common Area. Declarant shall also have the right of ingress, egress and regress over the aforesaid Single Family Lots and Common Area in order to maintain and replace any such signs until all of the Lots in the Subdivision have been conveyed by Declarant.

Section 8.5. Nuisances Rubbish.

No activity may be carried on which shall or may be offensive, illegal, or an annoyance or nuisance, as determined by Declarant. No Townhome Lot or right-of-way shall be used for rubbish disposal, or for storage if such storage may cause such Lot or right-of-way to appear unclean or unsightly; nor shall any thing be kept upon any Townhome Lot or right-of-way that will emit a foul odor or will cause noise that might disturb the peace. However, the foregoing shall not be construed to prohibit temporary deposits of trash, rubbish and other such debris for pick up by trash removal service units, but such deposits shall only be permitted upon the specific day of pick up. In the event any Owner fails or refuses to keep his Lot free from unsightly objects, weeds, or underbrush or to maintain the structures of each Dwelling in a manner satisfactory to the Board of Directors, the Board of Directors may, five days after delivering notice to the Owner requesting the Owner comply with the requirements of this paragraph, enter and remove all such unsightly objects or vegetation at Owner's expense and Owner agrees to pay such costs incurred by the Association in the enforcement of this paragraph, such charge being deemed a Specific Special Assessment. No such entry as provided herein shall be deemed a trespass. The foregoing provisions shall not apply to Declarant while constructing Buildings upon any Townhome Lots.

Section 8.6. Clotheslines, Garbage Cans; Lawn Maintenance, General Upkeep of Lots, etc.

No clotheslines shall be permitted on any Townhome Lot. All garbage cans, lawn mowers, stored materials, and similar equipment shall be kept in an enclosed structure or adequately screened by planting or fencing, as determined by the Board of Directors. No wrecked, unlicensed or inoperable vehicles or similar equipment shall be kept on any Townhome Lot. Incinerators for garbage, trash or other refuse shall not be permitted anywhere in the Subdivision. All garbage cans and other sanitary containers must be screened from view from the street, and shall not be permitted to be left on the street for pickup for more than 12 hours. Temporary window treatments (such as towels, bed sheets, etc.) shall not be permitted except for the first 30 days after an Owner takes possession of his/her/their Lot. No trash, rubbish, garbage or other waste material shall be kept or permitted upon any Townhome Lot or the Common Area, except in garbage cans or other sanitary containers. No weeds, vegetation, rubbish, debris, garbage, or other waste materials shall be permitted to accumulate on any Lot or any other portion of the Subdivision which would render it unsanitary, unsightly, or offensive.

Section 8.7. Antennas, Satellite Dishes.

No freestanding radio or television transmission or reception towers, antennas, dishes or discs shall be erected on a Townhome Lot. One radio/ television antenna not exceeding three (3) feet in height above the roofline of the Dwelling, and one satellite dish or disc not exceeding three (3) feet in diameter may be installed, provided that they are attached to the Unit and not visible from the street in front of the Building. On Buildings that have a southern-facing front elevation, or that for whatever reason cannot reasonably use satellite dishes subject to the foregoing limitations, it shall be permissible to place one satellite dish, not attached to the Unit, in the front or side yard of such Lot, provided that such dish is no more than three feet from the Unit, and is screened from view by landscaping, such installation to be specifically approved by the Association. Notwithstanding the foregoing, the Association shall permit television signal reception antennas pursuant to FCC regulations published at 47 C.F.R. § 1.4000 subject to certain conditions as approved by the Association.

Section 8.8. ~~Walls, Fences and Hedges.~~

~~No walls, fences, patio enclosure, hedge, garden or mass planting shall be erected, maintained or permitted on any Townhome Lot other than those approved by the Association (or the Declarant prior to the conveyance by Declarant of the last Unit or Townhome Lot).~~

Section 8.9. ~~Pools.~~

~~No pools, spas or hot tubs shall be permitted upon any Townhome Lot unless approved by the Association (or the Declarant prior to the conveyance by Declarant of the Last Unit or Townhome Lot).~~

Section 8.10. ~~Driveways and Parking Areas.~~

~~Only driveways and parking areas constructed of concrete or brick shall be permitted.~~

Section 8.11. ~~Boats, Commercial Vehicles, Etc.~~

No boats, motor homes, trailers, campers, mobile homes, commercial trucks of any

size, recreational vehicles in excess of twelve (12) feet in length or motorized vans used for commercial purposes (as distinguished from vans used solely as passenger vehicles), wrecked vehicles, inoperable vehicles or any vehicle not regularly operated shall be parked within the right of way of any public or private street within the Subdivision. In addition, at no time shall any of the above-mentioned boats, trailers or vehicles be placed upon a Townhome Lot.

Section 8.12. Outbuildings.

No underground shelters or outbuildings (including trailers, tents, shacks or storage sheds) of any sort, temporary or permanent, may be erected or constructed on any Townhome Lot.

Section 8.13. Basketball Goals and Mailboxes.

~~No basketball goals shall be permitted on a Townhome Lot.~~

Section 8.14. Minimum Square Footage.

Dwellings upon any Single Family Lot shall contain not less than a minimum of one thousand two hundred fifty (1,250) square feet of heated floor area, exclusive of garage, carport, unheated storage areas and non-living space for dwellings.

Section 8.15. Subdivision of Lots.

No Townhome Lot shall be subdivided by sale or otherwise, except by and with the written consent of Declarant and in compliance with local ordinances. The foregoing notwithstanding, the Declarant shall at all times have the right to reconfigure all unsold Townhome Lots, provided that such reconfiguration is in compliance with local ordinances. Such reconfiguration by the Declarant need not result in the same number of Lots existing in the Subdivision, it being the intent of this Section to provide the Declarant with the right to change the size, number, and use (i.e.: from Townhome to Condominium; from Condominium to Townhome) of any unsold Lots in the Subdivision.

Section 8.16. Fire.

In the event any home or structure is destroyed or partially destroyed, said damage

must be repaired and the improvement reconstructed as provided herein.

Section 8.17. Utility and Drainage.

An easement on each Townhome Lot is hereby reserved by Declarant for itself and its successors and assigns along, over, under and upon a strip of land ten (10) feet in width along the rear lot lines, and easements five (5) feet in width along the front and side lot lines of all Townhome Lots, in addition to any other Easements. The purpose of these easements shall be to provide, maintain, and operate drainage facilities and utility service lines to, over or for each of the Townhome Lots. Within these easements, no structure, planting or other material shall be placed which may interfere with the installation or maintenance of utilities, or which may change the direction or flow of drainage channels in the easements. The easement area and all improvements in it shall be maintained by Owner, except for those improvements for which a public authority or utility company is responsible. With ten (10) days prior written notice to Owner, Declarant may exercise the right to remove obstructions in such easements upon Owner's failure to do so, at Owner's expense, and Owner agrees to pay costs incurred by Declarant in doing so. For the purpose of this covenant, Declarant reserves the right to modify or extinguish the easements herein along any Lot lines in its sole discretion. For the duration of these restrictions, no such utilities shall be permitted to occupy or otherwise encroach upon any of the easement areas reserved without first obtaining the prior written consent of Declarant; provided, however, local service from utilities within easement areas to residences constructed upon any such Lots may be established without first obtaining separate consents therefor from Declarant.

Section 8.18. Emergency.

There is hereby reserved a general easement to all firemen, ambulance personnel, police and security guards and all similar persons to enter upon the Property or any portion thereof, in the performance of their respective duties. Neither the Association nor the Declarant shall be responsible for any damage caused to any Lots due to the use of this emergency personnel easement.

Section 8.19. Window Units.

No window air conditioning unit shall be installed in any Dwelling.

Section 8.20. Awnings.

~~No patio coverings or awnings on the front of any Dwelling shall be permitted except as approved by the Association.~~

Section 8.21. Recreational Equipment.

All recreational equipment and personal property other than automobiles must be stored in such a manner as not to be visible from any street or to the Owners of any other Townhome Lot.

Section 8.22. Storm Doors, Screen Doors.

No screen or storm doors shall be permitted on the front entrance to any Unit except those made of glass or plexiglass which are transparent and have been approved by the Association.

Section 8.23. Pumps, Tanks.

No heat pump, propane tank, solar device, or other similarly exposed mechanical equipment other than those originally installed by the Declarant or a builder, shall be placed on any Townhome Lot, unless screened from view from the street in front of the Building, and from other Owners, and approved by the Association.

Section 8.24. Garages.

No garage, carport or similar structure shall be constructed anywhere on any Townhome Lot other than by Declarant or as approved by the Association.

Section 8.25. Enforcement.

If any Owner shall violate or attempt to violate any of these restrictions, it shall be grounds for an action to recover sums due, damages or injunctive relief, or both, maintainable by Declarant, the Association, or, in the proper case, by an aggrieved Owner. Failure by Declarant or any other Owner to enforce any of the foregoing restrictions or other provisions shall not be deemed a waiver of their right to do so. The Association may not file any lawsuit for purposes of enforcing this Declaration except in accordance with Section 13.1.

Section 8.26. Declarant's Right to Repurchase.

If at any time Declarant sells any Townhome Lot to a person or persons, firm or corporation, and such person or persons, firm or corporation shall intend to sell such Townhome Lot before any residence is constructed on said Townhome Lot, Declarant reserves and shall have the right and option, but not the obligation, to purchase the Townhome Lot at a price not to exceed the original selling price with the option expiring thirty (30) days after the Owner notifies the Declarant in writing of his, her or their intentions, said notice to be by certified mail with return receipt, and said notice shall contain the name and address of the intended purchaser and the price and all other terms of the intended sale.

Section 8.27. General.

Each Townhome Lot now or hereafter subjected to this Declaration shall be subject to all Easements. No structure of any type shall be erected upon a Lot which will interfere with rights and use any Easement.

Section 8.28. Waiver.

Declarant may, but need not, waive in writing any violation of the designated and approved building location lines on either side lot line, horizontal measurement only, provided that such violation does not exceed 10% of the applicable requirements and provided such violation does not violate any local ordinance or zoning.

ARTICLE IX

USE RESTRICTIONS: CONDOMINIUM UNITS

The use restrictions on the Condominium Units shall be as set forth in more detail in the Condominium Declarations.

ARTICLE XI

INSURANCE

Section 12.1. Insurance Coverage to be Maintained - Use and Distribution of Insurance Proceeds.

(a) The Association shall maintain in full force and effect fidelity insurance coverage protecting against dishonest acts by Association officers, directors, trustees, and employees and all others who are responsible for handling funds of the Association in the amount of one year's operating budget, plus projected reserve balances during the budget year. If professional management is obtained by the Association and it has this coverage and it handles the funds, then this requirement will be satisfied.

(b) If the Board of Directors so elects, officers and directors liability insurance covering the officers and directors of the Association may be obtained in such amount as the Board of Directors shall determine.

(c) The Association shall obtain and maintain at all times insurance on all buildings and other improvements to any Townhome Lot or any other part of the Property and to the Amenity Areas of the Property and all personal property included in the Common Area, in an amount, after application of deductibles, not less than one hundred percent (100%) of the actual cash value of the Property covered at the time such insurance is purchased and at the time of each renewal thereof, without deduction for depreciation, and exclusive of the cost of any real property, excavation, foundations, streets and parking facilities. Such policies shall also contain clauses providing for a waiver of subrogation against any Owner and members of Owner's household. They shall also contain the standard townhome endorsement and shall provide that such policies may not be canceled or substantially modified without at least thirty (30) days prior written notice to all the insureds, including all mortgagees. Such policies shall further provide that no act or omission by any Owner, unless acting within the scope of his authority on behalf of the Association will preclude recovery upon such policy. All such policies shall provide that adjustment of loss shall be made by the Association as insurance trustee. Each insurance policy shall provide for the issuance of certificates or mortgage endorsements to mortgagees.

(d) The Association shall have the further right to purchase and maintain comprehensive general liability insurance coverage and such other insurance coverage as the board of directors may deem necessary and appropriate.

(e) Premiums upon insurance policies purchased by the Association shall be paid by the Association as common expenses to be assessed and collected from all of the Owners.

(f) All insurance policies purchased by the Association shall be for the benefit of the Association.

ARTICLE XII

GENERAL PROVISIONS

Section 12.1. Enforcement.

The Declarant, the Association, any Owner or any other person, firm or corporation owning any interest in a Lot shall have the right to enforce by any proceedings at law or equity all conditions, covenants, restrictions, reservations, liens and charges now or hereinafter imposed by the provisions of this Declaration. Failure by such party to enforce any such covenant, condition or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. The Declarant or Association shall have the right to request that law enforcement, public safety and animal control officers come on the Property to facilitate the enforcement of the laws, codes and ordinances of any governmental authority.

Section 12.2. Lawsuits.

The Association may not institute formal legal proceedings for any purpose, other than the collection of Assessments owed, without the affirmative approval of two-thirds of the votes entitled to be voted.

Section 12.3. Severability.

Invalidation of any one of the covenants, conditions or restrictions of this Declaration, or any part thereof, by judgment or court order shall in no way affect any of the other provisions not expressly held to be void and such remaining provisions shall remain in full force and effect.

Section 12.4. Effective Period.

The covenants, conditions, and restrictions of this Declaration shall run with the land and bind the Association and the Owners of Lots for a period of twenty-five (25) years from the date this Declaration is recorded, after which time such covenants, conditions and restrictions shall be automatically extended for successive periods of ten (10) years

until amended or terminated as herein provided. The reserved easements shall run permanently with each Lot.

Section 12.5. Amendment and Termination.

This Declaration may not be materially altered, amended, modified, canceled or changed at any time during the first twenty (20) year period, except by a written document executed by the Declarant, so long as the Declarant owns any Lot, together with the Owner or Owners of two-thirds of the Lots then owned by persons other than the Declarant, and thereafter by a written document signed by the Owners representing two-thirds of the votes entitled to vote. Any such Amendment must be recorded in the Mecklenburg County Public Registry and shall not be effective until so recorded.

The foregoing notwithstanding, the Declarant may amend this Declaration at any time to correct scrivener's errors, patent or latent ambiguities, or to make any other modifications whatsoever that do not materially adversely affect the rights or responsibilities of any Owner.

Section 12.6. Enforcement of Expenses as a Lien Upon Property.

All costs incurred by the Declarant or the Association in the enforcement of the terms and conditions hereof, including court costs, fines levied, costs of correcting deficiencies by any Owner of a Lot or Lots, and reasonable attorneys' fees in the enforcement hereof, shall be a personal liability of the Owner or Owners of such Lot or Lots subject to the enforcement or collection hereunder, and furthermore such costs and fees shall be a lien upon the Lot of the Owner, and each Owner agrees to accept such personal liability and the lien enforcement rights of the Declarant and the Association by acceptance of a deed to any Lot or Lots in the subdivision; provided, however, said lien shall be subject to the limitations contained in Article V hereof.

Section 12.7. Amendment to Conform to Requirements of FHA/VA/FHMA/FHLMC.

Declarant, without consent or joinder of the Association or any other Owner of Lot or Lots, may amend this Declaration to conform to the requirements of the FHA/VA/FNMA/FHLMC at any time during which Declarant owns any of the Property.

Section 12.8. FHA / VA Approval.

In the event the Declarant has arranged for and provided purchasers of Lots with FHA/VA insured mortgage loans, then as long as any Class B Lot exists, as provided in Article III hereof, the following actions will require the prior approval of the Federal Housing Administration or the Veterans Administration: Annexation of additional properties, other than as provided in Article II hereof, and amendment of this Declaration of Covenants, Conditions, and Restrictions transfer or dedication of the Common Area to any municipal authority.

In the event the necessary HUD/FHA/VA, or other governmental approval is not obtained for any action as called for in this Declaration, such failure shall not void said action, but shall merely make such action subject to subsequent disapproval or modification by the appropriate governmental agency.

Section 12.9. Headings.

Article and section headings are inserted for convenient reference and are not to be construed as substantive parts of the paragraphs to which they refer, except to the extent they differentiate between different classes of Lots, Members, or dues and Assessments.

Section 12.10. Assignment and Delegation.

The Declarant reserves and shall have the right and option at any time and from time to time to assign and delegate any or all of its rights and its duties under this Declaration.

Section 12.11. Consent by Lender.

Bank of America, N.A. (Lender) and PRLAP, Inc. (Trustee) , as Beneficiary and Trustee, respectively of that Deed of Trust executed on October 4, 2002 and recorded in Book 14186 at Page 637-639 of the Mecklenburg County Registry, and which may have been or may be modified from time to time, which encumbers the Property, approve this Declaration and agree to abide by its terms, and further recognize that they are not a Declarant hereunder, nor do they assert any rights, or accept any responsibilities of the Declarant. Their execution hereof is made only to express consent to be bound by said Declaration, and to subordinate the aforementioned Deed of Trust to this Declaration.

IN WITNESS WHEREOF, the Declarant has caused this Declaration to be executed as of the day and year first above written.

Gateway Home IV, LLC,
A North Carolina limited liability company

Approved:

By: 

By:

Doug Levin, Manager

Attest:

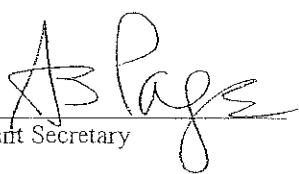

AB Page
Assistant Secretary

Bank of America, National Association

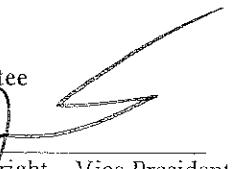
By: 

Dwayne Wright - Vice President

Attest:


AB Page
Assistant Secretary

PRLAP, Inc., Trustee

By: 

Dwayne Wright - Vice President

State of North Carolina

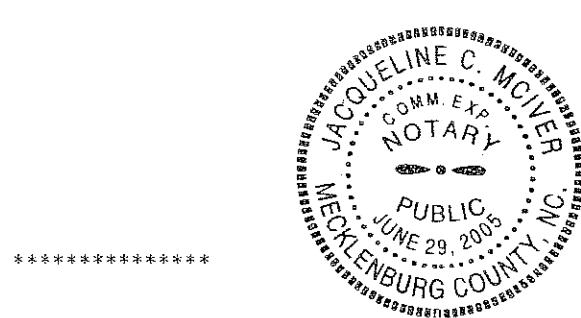
County of Mecklenburg

I Jacqueline C. McIver a Notary Public, do hereby certify that Adrienne Page personally came before me this day and acknowledged that she is Assistant Secretary of Bank of America, National Association, a national banking organization, and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its Vice President, sealed with its corporate seal and attested by Adrienne Page as its Assistant Secretary.

Witness my hand and official seal, this the 18th day of October, 2002.

Jacqueline C. McIver
Notary Public

My Commission Expires: 06-29-05



State of North Carolina

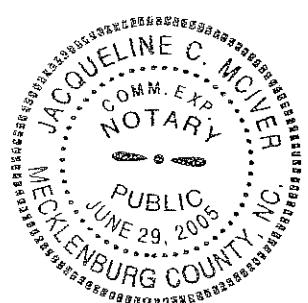
County of Mecklenburg

I Jacqueline C. McIver a Notary Public, do hereby certify that Adrienne Page personally came before me this day and acknowledged that she is Assistant Secretary of PRLAP, Inc., a North Carolina Corporation and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its Vice President, sealed with its corporate seal and attested by Adrienne Page as its Assistant Secretary.

Witness my hand and official seal, this the 18th day of October, 2002.

Jacqueline C. McIver
Notary Public

My Commission Expires: 06-29-05



STATE OF NORTH CAROLINA
COUNTY OF MECKLENBURG

I, Brenda V. Blackwell, Notary Public for said County and State, certify that Doug Levin personally came before me this day and acknowledged that he is Manager of Gateway Homes IV, LLC, a North Carolina limited liability company, and that he, as Manager, and being authorized to do so, executed the foregoing on behalf of the company.

Witness my hand and official seal, this the 16~~14~~ day of October, 2002.

(Official Seal)

Notary Public: Brenda V. Blockwell

My Commission Expires: November 16, 2004

STATE OF NORTH CAROLINA
COUNTY OF MECKLENBURG

I, _____, Notary Public for said County and State, certify that Doug Levin personally came before me this day and acknowledged that he is _____ President of _____, a _____, and that he, as President, and being authorized to do so, executed the foregoing on behalf of the corporation.

Witness my hand and official seal, this the _____ day of _____, 2002.

(Official Seal)

Notary Public

My Commission Expires:

EXHIBIT A

Lying and being all of that property shown on the final plat of the Colony Map 1 recorded in Map Book 38 at Page 393 in the Mecklenburg County Public Registry.

LESS AND EXCEPT Lot B as shown on Final Plat of The Colony Map 1 recorded in Map Book 38 at Page 393 in the Mecklenburg County Public Registry.