

22

CUH



Doc ID: 020093240022 Type: CRP
Recorded: 06/19/2007 at 09:06:45 AM
Fee Amt: \$77.00 Page 1 of 22
Workflow# 2376534
Buncombe County, NC
Otto W. DeBruhl Register of Deeds

BK 4421 PG 1769-1790

STATE OF NORTH CAROLINA
COUNTY OF BUNCOMBE

Prepared by and return to: *Box 81*
Cogburn Goosmann Brazil & Rose, P.A.
Post Office Box 7436
Asheville, NC 28802
(File No. 05-1530b) *UH*

DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR LEDBRIDGE VISTA SUBDIVISION

This **DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR LEDBRIDGE VISTA** (the "Declaration") is made to be effective as of this the 30 day of August, 2006 by **Kasey-Phillips Development, LLC**, a North Carolina limited liability company and **Harrell & Associates Realtors, LLC**, a North Carolina limited liability company (collectively, the "Declarant").

RECITALS:

Declarant is the fee simple owner of that certain parcel of real property located in Buncombe County, North Carolina, and more particularly described in "Exhibit A" attached hereto (the "Property"), together with all buildings and improvements now or hereafter constructed or located thereon, and all rights, privileges, easements and appurtenances belonging to or in any way pertaining to said real property and all articles of personal property now or hereafter provided by Declarant and intended for use in connection therewith, which all or a portion of the Property will be divided into Units as shown on plat entitled "**Ledbridge Vista**" (or "Ledbridge Estates - Phase 2"); which Plat is recorded in the Office of the Register of Deeds for Buncombe County Plat Book 110, at Page 197 (the "Plat"). This Declaration shall be applicable to Phase Two of Ledbridge Estates. Phase One and Phase Three are adjoining planned developments within the Community, each of which will have specific and distinct restrictions, but may be later subjected to a Master Declaration to govern issues common to each Phase. Declarant is the developer for all three phases of Ledbridge Estates. Each of the phases may share some common elements and utility connections.

Declarant, in anticipation of division of ownership of the Property into Units shown on the Plat, and in furtherance of its development of the Property for residential use, desires to establish an integrated complex and desires to provide for certain reciprocal rights, easements and restrictions affecting those portions of the Property pursuant to this Declaration.

AGREEMENT:

NOW, THEREFORE, for and in consideration of the mutual covenants existing or hereafter to exist between the Declarant and the future owners (collectively, the "Owners") of any portion of the Property, the Declarant does hereby declare and impose and place the following restrictions and easements upon the Property, or portions thereof, reserving certain rights and privileges, all as more particularly set forth as follows:

ARTICLES I
DEFINITIONS

As used in this Declaration, the following terms shall have the meaning assigned to them below:

1. "Act" shall mean and refer to the North Carolina Planned Community Act as set forth and contained in Chapter 47F of the North Carolina General Statutes.
2. "Association" shall mean and refer to Ledbridge Vista Town Home Owners' Association, Inc., a nonprofit corporation organized under the laws of the State of North Carolina, its successors and assigns.
3. "Board" or "Board of Directors" shall mean and refer to the Board of Directors of the Association.
4. "Common Elements and/or Common Area" shall mean all portions of real property and things owned by and cared for by the Association. The Common Area to be owned by the Association shall be designated on a plat or plats recorded in the Buncombe County Registry and shall be conveyed to the Association at the Developer's discretion.
5. "Common Expenses" shall mean and include: (a) all sums lawfully assessed against the Unit Owners by the Association; (b) expenses of administration, operation, maintenance, repair and replacement of the Common Elements and facilities; (c) expenses agreed upon as common expenses by the Association; and (d) hazard and liability insurance premiums for policies described in Article VII hereof.
6. "Common Expense Liability" shall mean the liability for common expenses allocated to each Unit.
7. "Community" shall mean all that real property owned or later acquired by the Declarant adjacent to the property, which will be subject to the Association and which the Declarant may elect to submit to a Master Declaration to govern said community and/or related communities.
8. "Declarant" shall mean and refer to Kasey-Phillips Development, LLC, a North Carolina limited liability company and/or Harrell & Associates Realtors, LLC., their successors and assigns, including any person or entity that succeeds to any Special Declarant Rights (as defined in Section 47F-1-103(9) of the Act) pursuant to Section 47F-3-104 of the Act.
9. "Declaration" shall mean this Declaration of Covenants, Conditions, and Restrictions, made herein by Declarant.
10. "Directors" shall mean and refer to the members of the Board of Directors of the Association.
11. "Limited Common Elements" shall mean a portion of the common elements allocated by this Declaration or by operation of North Carolina General Statute section 47F-1-103(18) for the exclusive use of one or more but fewer than all of the units.

3

12. “Master Association” shall mean and refer to a master association for Ledbridge Estates, Ledbridge Vista, and Ledbridge Villas, a nonprofit corporation or other association which may be organized under the laws of the State of North Carolina, at a date to be determined, and its successors and assigns, in Declarant’s discretion.

13. “Member” shall mean and refer to any person or entity who holds membership with voting rights in the Association, which membership shall be derived from ownership of any Unit.

14. “Occupant” shall mean and refer to any person who is in possession of a Unit, including Unit owners and tenants, guests, and invitees of the Owners.

15. “Person” shall mean and refer to a natural person, corporation, estate, trust, partnership, association, joint venture, limited liability company, or legal or commercial entity, or any combination thereof.

16. “Plans” shall mean and refer to the plans and specifications of the buildings, improvements and Units located on the Property, which Plans will be recorded in the Office of the Register of Deeds for Buncombe County.

17. “Rules and Regulations” shall mean and refer to the rules and regulations of the Association promulgated by the Board of Directors of the Association.

18. “Special Declarant Rights” shall mean and refer to the rights defined in Section 47F-1-103(28) of the Act as the same are reserved herein and in the Bylaws for the benefit of the Declarant.

19. “Unit” shall mean and refer to the physical portion of the town home designated for separate ownership, the boundaries of which are hereinafter described in Article III hereof. Each Unit is designated, delineated, and shown on the Plans. A Unit shall mean the building and real property designated on the Plans as a residence by a single family.

20. “Unit Owners” shall mean and refer to any person or persons, including the Declarant, who own a Unit in fee simple. Unit Owners shall not include a person having an interest in a Unit solely as security for an obligation.

21. “Utility Lines” shall mean any and all lines installed to convey electricity, natural gas, water, storm water runoff, telephone, cable TV, sewage or other utilities to or from the property or any Unit thereof.

ARTICLE II
SUBMISSION OF THE PROPERTY TO THE
ACT AND CREATION OF THE ASSOCIATION

1. Submission of the Property and Creation of a Planned Community. Pursuant to the provisions of the Act, Declarant hereby creates a planned community comprised of portions of the Property located in Buncombe County, North Carolina. Declarant hereby submits that portion of the Property shown on the Plat to this Declaration and to the Act.

2. Name. The name of the planned community created by this Declaration is Ledbridge Vista.

3. Separately Owned Units. As shown on the Plat and Plans, Declarant, to establish a plan of ownership, has or will construct Units upon the Property, and does hereby designate all such Units for separate ownership.

4. Reservation of Special Declarant Rights. Declarant hereby reserves unto itself, its successors in interest and assigns, as Special Declarant Rights, as follows:

(a) Declarant reserves all the rights set forth in the Act and specifically those rights set forth in and described in Sections 47F-1-103(28) and 47F-3-104 of the Act;

(b) Declarant reserves the right to use all types of easements through the Common Elements for the purpose of making improvements, resolving encroachments, connecting to utilities and/or granting access within the Common Areas or upon adjacent parcels or phases of development and to change or alter road access and rights-of-way at any time;

(c) Declarant reserves the right to exercise development rights and not to be subject to specific restrictions set forth herein for purposes of development;

(d) Declarant reserves the right to maintain sales offices, management offices, and models in any Unit, upon Common Areas, or elsewhere upon the Property;

(e) Declarant reserves the right to withdraw or add certain separate portions of the real estate as shown on the Plat;

(f) Declarant reserves the right to build additional Units, and to relocate the boundaries of any Unit, including the right to designate portions of the Common Area as additional Units or as part of an existing Unit;

(g) Declarant reserves the right to access and connect to rights of way, easements, utilities, and common facilities for the benefit of adjacent parcels or phases developed by Declarant; and

(h) Declarant reserves the right to submit the property to a Master Declaration for the Community, including adjacent parcels.

(i) Declarant reserves the right to amend these Declarations, without approval or joinder of any Owners, until ninety (90) percent of all Units are sold (and instruments of conveyance are recorded) by the Declarant.

(j) Declarant reserves the right to amend boundaries of any Common Area and to grant easements for encroachments upon any Common Area for any improvements within the Community or for improvements constructed by Declarant on adjacent property.

(k) Declarant reserves the right not to be assessed or to be responsible for any fees or assessments from the Association or otherwise for Units or portions of the Property titled in the name of the Declarant unless such applicable Unit shall be Occupied as a residence.

5. Master Association. Declarant may develop adjacent parcels into a common scheme of development and may establish a Master Association to govern the community as a whole and to provide for the maintenance of common facilities. Said Master Association may be established after the date of this Declaration, and may include additional condominiums, cooperatives, town homes, apartments, and single

family residential home lots. For purposes of the Master Association, its primary responsibilities will be to consider and care for elements common to the entire development and phases with respect to items such as certain landscaping relating to joint areas, general liability coverage, improvements to roads, etc., and to work with the other individual associations that may exist. The individual associations may classify individual structures for its purposes as single, twin, quad, etc. as appropriate for its purposes and assessments.

ARTICLE III UNITS AND UNIT BOUNDARIES

1. **Units.** The location of each Unit is shown on the Plat, which designates the number for each Unit.
2. **Unit Boundaries.** Each Unit encompasses and includes all that portion of the Unit designated on the Plat and Plans and shall include all the space within the boundaries thereof including the real property upon which the Unit is located. In interpreting this Declaration and the Plans, the actual physical boundary of a Unit shall be conclusively presumed to be its boundaries rather than its boundaries expressed in this Declaration or in the Plans, regardless of settling of the building and regardless of minor variances shown on the Plans and those of the Unit in questions.
3. **Single Units.** If a Unit's roof does not touch another Unit's roof, then that Unit shall be considered a single Unit for purposes of assessments and fees.

ARTICLE IV COMMON ELEMENTS

1. **Common Elements.** The Common Elements of the town homes consist of that portion of the Property shown on any recorded plat designated as a Ledbridge Estates - Phase Two, Ledbridge Vista, including all improvements located thereon, other than the Units and shall include, but not be limited to:
 - (a) all central and appurtenant installations and utilities wherever located for services such as, but not limited to, electric power, gas, water, cable television, plumbing, and sewer designed, constructed and intended for common use;
 - (b) parking areas (not to include driveways, parking areas and garages within the Unit boundaries), landscaping, trees, shrubs, fences, driveways, walkways, and retaining walls; and
 - (c) all other parts of the Property subject to this Declaration and all improvements located thereon not located within or being part of a Unit, all real property not included within a numbered lot as shown on the plats, and all the apparatus and installations, in the Unit or on the Property for the common use and benefit of the Unit Owners and necessary or convenient to the existence, maintenance and safety of the Property, except for those areas designated as Limited Common Elements.
2. **Limited Common Elements.** Limited Common Elements shall consist of those areas designated as Limited Common Elements on the Plat or Plans; any Common Elements used by some but not all Units; and/or that area which arises by operation of law.
3. **Conveyance of Encumbrances of the Common Elements.** No portion of the Common Elements may be conveyed or encumbered without the unanimous and written consent of all the Unit Owners, except as permitted under the Special Declarant Rights as set forth in Article II, Section 3.

ARTICLE V
EASEMENT AND USE OF COMMON ELEMENTS

1. **Encroachments.** If any portion of the Common Elements that now encroaches upon any Unit, or if any Unit now encroaches upon any other Unit or upon any portion of the Common Area, or if any such encroachment shall occur hereafter as a result of (a) settling of a Unit; (b) repair, alteration, or reconstruction of the Common Elements made by or with the consent of the Association; (c) repair or reconstruction of a Unit following damage by a fire or other casualty; or (d) condemnation or eminent domain proceeding, a valid easement shall exist for such encroachment and for the maintenance of the same so long as the encroachment exists; provided however, that in no event shall an easement for such encroachment be created if such encroachment is detrimental to or interferes with the reasonable use and enjoyment of the Common Elements or Units to be encroached upon.
2. **Access Easement.** Each Owner of a Unit and its tenants, sub-tenants, concessionaries and licensees, and its and their respective officers, employees, agents, customers, contractors, vendors and invitees, is hereby granted the nonexclusive, permanent, perpetual, mutual, and reciprocal right, privilege and easement appurtenant to such Owner's Unit to use all of the vehicular and pedestrian roadways, entrances and exits, parking lots, drive aisles, and sidewalks located within the Common Elements, without payment of any additional assessment or fee or other charge being made therefore.
3. **Right of Access.** The Declarant and the Association shall have the irrevocable right, to be exercised by the Board of Directors, to all Common Areas, Common Elements, and Limited Common Areas for the maintenance, repair, or replacement of anything accessible therefrom, or for making emergency repairs therein necessary to prevent damage to the Common Elements or to any Unit.
4. **Maintenance of Common Elements.** The necessary work of maintenance, repair and replacement of the Common Elements and the making of any additions or improvements thereto shall be carried out only as provided in the Act, this Declaration and the Bylaws.
5. **Partition.** The Common Elements shall remain undivided and no Unit Owner or any other person shall bring any action for partition or division of any part thereof, unless the Property has been removed from the provisions of the Act in the manner herein provided. Any covenant to the contrary shall be null and void.
6. **Easement for Structural Support.** Every portion of a Unit or the Common Elements which contributes to the structural support of another Unit or another portion of the Common Elements shall be burdened with an easement of structural support.
7. **No Barriers.** No barriers, fences, or other obstructions shall be erected so as to impede or interfere in any way with the free flow of vehicular and pedestrian traffic along those portions of the Common Area from time to time devoted to pedestrian and/or vehicular access, or that in any manner restrict or interfere with the full and complete use and enjoyment of the rights and easements granted herein.
8. **Utility Easements.** Each Owner of a Unit is hereby granted a nonexclusive right, privilege and easement appurtenant to his/her or its Unit over and across the Common Elements for the purpose of the installation, maintenance, repair, operation and use of Utility Lines serving each Unit; provided, however, that such Utility Lines shall not be located under the existing or proposed location of any improvements constructed or to be constructed on the Unit. Utility Lines may be located beneath landscaped areas or areas paved for sidewalks, parking, or drives. The Owner installing the Utility Lines shall be responsible for the cost and expense of such installation, including without limitation, tap fees to the appropriate municipality or municipal agency. All Utility Lines shall be underground, except: (i) ground mounted electrical transformers; (ii) Utility Lines which may be necessary during periods of construction, reconstruction, repair

or temporary service; (iii) Utility Lines which may be required~ by governmental agencies having jurisdiction; (iv) Utility Lines which may be required by the provider of such service; and (v) fire hydrants.

9. Community Easements. All Common Areas and Common Elements shall be subject to; (i) easements for ingress, egress, and regress; (ii) easements for utility connections; (iii) and easements of access to common facilities for the benefit of and to serve adjacent parcels, at the discretion of the Declarant. In such instances where rights of way, utility easements, common systems, and facilities are shared, the Association shall enter into maintenance agreements to provide the common maintenance of such shared elements.

10. Parking Standard. The Owner of a Unit, tenants and guests shall, to the extent reasonable, park within the bounds of their Unit. Except for emergency repairs, no person shall repair or restore any vehicle, boat, or trailer upon any portion of any of the Common Areas or rights of way. The Homeowner's Association shall have the right and authority to formulate rules governing the size and weight of vehicles which may be parked or stored within the Common Areas or rights of way.

11. Trash. All garbage and other refuse shall be placed in sanitary containers immediately adjacent to the Units, or in receptacles designated by the Association, which shall be screened from view, except on collection day and shall be returned to such screened areas within twenty four (24) hours of collection. The Association may promulgate additional rules regarding the storage and disposal of trash..

ARTICLE VI ADMINISTRATION

1. Operation, Management, and Administration by the Association. To efficiently and effectively provide for the operation, management and administration of the issues relating to the common areas, common elements, easements, etc. by the Unit Owners, a North Carolina non-profit corporation known as Ledbridge Vista Town Home Owners' Association, Inc. (the "Association") has been formed. The operation, management, and administration of the Association shall be the right and responsibility of the Association and its Board of Directors and said management duties shall be carried out in accordance with the terms, conditions, and provisions of this Declaration, the corporation's Articles of Incorporation, and Bylaws and the Rules and Regulations of the Association. Each Unit Owner shall automatically become a member of the Association upon acquiring an ownership interest in any Unit in the Association and such membership shall terminate automatically upon the Unit Owner being divested of such ownership interest in the Unit, regardless of how such ownership may be divested. No person, firm, or corporation holding any lien, mortgage, security interest or other encumbrance upon any Unit shall be entitled, by virtue of said lien, mortgage, security interest or other encumbrance, to privileges of such membership. In the administration, operation and management of the Association, the Association is hereby granted the authority and power to enforce the provisions of this Declaration, to levy and to collect assessments, to adopt, promulgate, and enforce such Rules and Regulations governing the use of the Units and Common Areas as its Board of Directors deems in the best interest of all Unit Owners and to do and perform any other acts and carry out any other responsibilities or duties given to the Association by this Declaration, the Bylaws, and the Articles of Incorporation of the Association, and/or the Act. The Association shall have all of the powers and duties set forth in the Act, as well as all of the powers and duties granted to or imposed upon by this Declaration, the Articles of Incorporation and the Bylaws of the Association. The Developer may have a property management company manage the Association for a minimum period of one year after

2. Board of Directors to Act on Behalf of Association. The Board of Directors of the Association is hereby designated to act on behalf of the Association.

ARTICLE VII
BUDGET, ASSESSMENTS, LIENS, AND COLLECTIONS

1. Budget, Assessments, Liens. As a part of its right and obligation to operate, manage and administer the business of the Association, the Association shall have the right, authority, and obligation to establish a budget and provide for the payment of the Common Expenses by levying assessments against the Units for their proportional share of the Common Expenses which assessments shall be a lien on the Units against which they are assessed and if payment thereof becomes delinquent, the lien may be foreclosed and the Unit sold, or a money judgment obtained against the persons liable for such assessment, all as provided for therein and in the Bylaws of the Association and in the Act.
2. Assessment for Common Expenses. The Association is given the authority to administer the operation and management of its business affairs in the best interest of all Unit Owners. To accomplish this and to pay Common Expenses of the Association, the Association is granted the right to make, levy, and collect assessments against the various Units and Unit Owners.
3. Assessments Based on Percentage of Common Expenses Allocated to Unit. All assessments (except for certain items such as, but not limited to, garbage and snow removal, exterior lighting, etc. that will be assessed in equal amounts per Unit) levied against the Unit Owners and their 'corresponding Units shall be made by the Association based upon the relative size of the Units, and shall be based upon square footage area of the Units. As set forth above, single units may be assessed at a rate to cover the costs associated with the entire Unit as compared to Units within a structure that contains more than one Unit.
4. Fiscal Year. The fiscal year for the Association shall be July 1 through June 30.
5. Assessment in Monthly Installments. Assessments shall be payable by the Unit Owners by monthly installments on or before the first day of each month, or in such other manner as the Board shall determine.
6. Budget. Each year on or before April 1, the Board of Directors of the Association shall prepare and adopt a budget for the purpose of (i) providing for the payment of all Common Expenses together with such amounts as considered necessary by the Board for contingencies and reserves; (ii) determining the amount of the Annual Assessment to be collected from the Unit Owners in order to provide for the payment of such Common Expenses and necessary reserves of the Association, taking into consideration any expected income and any surplus from the prior year's operation; and (iii) to allocate and assess such Common Expenses among the Unit Owners according to the percentage of Common Expenses allocated to each Unit by this Declaration. Such budget shall project all expenses for the forthcoming year and shall contain an estimate of the total amount which it considers necessary to pay the Common Expenses of the Association which shall include, but not be limited to, the amounts necessary to pay for the cost of the administration, operation and management of the Association; the cost of all insurance premiums on all policies of insurance required to be or which have been obtained by the Board and pursuant to the provisions of this Declaration, the Bylaws, or the Act; the cost of maintenance, management, operation, repair, replacement and restoration of the Common Elements or any part thereof and those parts of the Units as to which it is the responsibility of the Association to maintain, repair, and replace; the cost of wages, materials, services, supplies and other expenses that may be declared to be Common Expenses by this Declaration, the Act, the Bylaws, or a resolution of the Board of Directors; such amounts as the Board may deem necessary and proper in providing for the convenience, comfort, and well-being of the Unit Owners and for the rendering to the Unit Owners of all related services; the amount necessary to make up any deficit in the budget for any prior year; and any other expenses lawfully agreed upon. The budget shall include a reasonable amount for contingencies and reserves including, without limitation, an amount for a general operating reserve and a reserve for repairs and replacements as is hereinafter provided. Upon adoption of the annual budget, the Board shall cause to be sent to each Unit Owner, at least thirty (30) days prior to the date of the annual meeting, a copy of the

budget in a reasonably itemized form which sets forth the amount of Common Expenses and provides notice of the amount of the annual assessment against each Unit based upon such budget and each Units allocated percentage of Common Expenses as set forth in this Declaration. The budget shall also state the amount of the monthly installment payments of the annual assessment due from each Unit Owner. The assessment shall be deemed levied upon the giving of such notice. Any increase in the annual assessment which exceeds the annual assessment for the previous year by more than twenty percent (20%) must be approved by a majority of the Unit Owners at a meeting specially called for such purpose after notice being duly given. Special assessments, as set forth herein, need not be so limited.

7. Reserves. The Board shall create, fund, and maintain the following reserves:

(a) Assessment for Reserve Establishment. In order to insure availability of adequate funds for future obligations, a one-time fee of *one hundred twenty and no/100 dollars (\$120.00)* shall be collected from Buyer at closing; and

(b) General Operating Reserve. The Board of Directors shall build up and maintain reasonable reserves for working capital, operations, and contingencies, to defray unforeseen expenses, and to provide a measure of financial stability to the Association in times of special financial stress. This fund may also be used to meet deficiencies from time to time as a result of delinquent payments, losses due to insurance deductibles or coinsurance amounts not covered by insurance, or other contingencies. *Unanticipated expenditures not originally included in the annual budget which may become necessary during the year shall be charged first against this reserve; and*

(c) Reserves for Repairs and Replacements. The Board, in establishing the annual budget, shall designate a sum to be collected and maintained as a reserve fund for the repair and replacement of the capital improvements which are Common Elements which shall be for the purpose of enabling the Association to repair and replace structural elements and other parts of the Common Elements and Common Areas. *This fund shall also be used for the replacement of personal property constituting a portion of the Common Elements held for the joint use and benefit of the Unit Owners. The amount to be allocated to this reserve shall be established by the Board to collect and maintain an amount reasonably necessary to anticipate the need for repair or replacement of the Common Elements. in establishing this reserve for repair and replacement, the Board shall take into account the number and nature of the improvements and assets of the Common Elements and Common Areas, the expected life of each improvement and asset, and the expected repair or replacement cost. The Board shall then attempt to set the required contribution to this reserve in an amount sufficient to permit meeting the projected capital needs of the Association with respect to both amount and timing by equal annual installments over the applicable period.*

8. Special Assessments. If the reserves hereinabove provided for are inadequate for any reason for the payment of necessary expenditures, the Board of Directors may at any time levy Special Assessments against the Unit Owners in accordance with the percentage of Common Expenses allocated to each Unit by this Declaration, which special assessments may be payable in a lump sum or in installments as the Board may determine, provided that repair or reconstruction of any portion of the Common Elements and Common Areas made pursuant to the Bylaws, any special assessment to be made against all Unit Owners for an expenditure in excess of Ten Thousand and No/1 00 Dollars (\$10,000.00) shall first be approved by the Unit Owners at a special meeting of the members called for such purpose. The Board shall serve notice of any such Special Assessment on all Unit Owners by a statement in writing giving the amount of the assessment and the reason therefore, and such Special Assessment shall, unless otherwise specified in the notice, become effective with the next monthly installment of the annual assessment which is due more than seven (7) days after the delivery or mailing of such notice of special assessment. All Unit Owners shall thereafter be obligated to pay the adjusted monthly amount or if not payable in installments, the entire amount of the Special Assessment as provided for in the notice of Special Assessment.

9. Assessments Against Unit Owners, Year End Accounting, Surplus, Shortages. All Unit Owners shall be obligated to pay: (a) annual assessments for Common Expenses assessed by the Board pursuant to Paragraph 6 of this Article; (b) Special Assessments to be established and collected as provided herein and in the Bylaws; and (c) specific assessments against any Unit which are established pursuant to the terms of this Declaration or Bylaws.

The total amount of the estimated funds required for the operation of the Association set forth in the budget for the fiscal year adopted by the Board shall be assessed against each Unit Owner in proportion to the percentage of Common Expenses allocated to his/her or its Unit in this Declaration. Such assessment shall be stated as an annual assessment and shall be a lien against each Unit as provided in the Act, this Declaration and the Bylaws. On or before the first day of each fiscal year and on the first day of each of the succeeding month such fiscal year, each Unit Member shall be obligated to pay to the Association or the Managing Agent (as determined by the Board), one-twelfth (1/12th) of the annual assessment against his Unit for such fiscal year made pursuant to the foregoing provisions. A late payment charge in an amount to be determined by the Board shall be assessed for any assessment or installment of an assessment not paid by the tenth (10th) of the month in which the monthly assessment is due. Any assessment or installment of an assessment not paid within fifteen (15) days of its due date shall accrue interest as provided in Paragraph 11 of this Article.

Within one hundred twenty (120) days after the end of each fiscal year, the Board of Directors of the Association shall supply to all Unit Owners an itemized accounting of the Common Expenses for such fiscal year actually incurred and paid, together with an tabulation of the amounts collected pursuant to the budget adopted by the Board for such fiscal year, and showing the net amount over or short of the actual expenditures plus payment to reserves. Any amount accumulated in excess of the amount required for actual expenses and reserves may, if the Board deems it advisable, be credited according to each Unit's percentage of Common Expenses to the monthly installments due from Unit Owners under the current fiscal year's budget until exhausted, or may in the Board's discretion be placed in the reserve accounts in such proportion as the Board, in its sole discretion, may determine. Any shortage shall be assessed promptly against the Unit Owners in accordance with the percentage of Common Expenses allocated to each Unit by this Declaration and such Assessment shall be payable either (a) in full with payment of the next monthly installment of the annual assessment, or (b) in not more than two (2) monthly installments payable over the two months immediately following the assessment, whichever the Board shall determine.

10. Funds of the Association. All funds collected by the Association shall be treated as the separate property of the Association, and such funds may be applied by the Association to the payment of any expense of operating, managing, maintaining, repairing or replacing the Common Elements or to the Association's undertaking of any and all acts and duties imposed upon it by this Declaration, the Article of Incorporation of the Association and the Bylaws. 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 Unit. When a Unit Owner shall cease to be a member of the Association, the Association shall not be required to account to such person for any share of the funds or assets of the Association, or for any amount which may have been paid to the Association by such person, as all funds which any Unit Owner has paid to the Association shall constitute an asset of the Association which may be used in the operation and management of the Association.

11. Payment of Assessments, Penalties. The payment of any assessment or installment thereof shall be delinquent and the Unit Owner shall be in default if such assessment or installment is not paid to the Association within nine (9) days of its due date. Assessments or installment payments of assessments not paid within nine (9) days of its due date shall be subject to a late payment charge in the amount to be

11

determined by the Board from time to time. In addition, any assessment or installment of an assessment not paid within fifteen (15) days of its due date shall be subject to an interest charge at the maximum annual rate allowable by law. The above described late charge and interest shall be added to and collected in the same manner as the assessment.

12. Personal Liability for Any and All Assessments. All Owners of each Unit shall be personally liable, jointly and severally, to the Association for the payment of all assessments, regular or special, which may be levied by the Association against his or its Unit dues assessed while such person or persons are the owner or owners of such Unit. In the event that any Unit Owner is in default in payment of any assessment or installment of an assessment owed to the Association, all owners of such Unit shall be personally liable, jointly and severally, for payment of any late charge and interest on such delinquent assessment or installment of assessment as above provided for, and for all costs of collecting such amounts including, but not limited to, reasonable attorneys' fees whether suit be brought or not. Failure of the Developer or the Association to exercise any of its remedies at any particular time shall not be a waiver thereof.

13. Liability for Assessments in Event of a Sale. No Unit Owner shall be liable for the payment of any part of the Common Expense assessment falling due subsequent to the sale, transfer or other conveyance by him of his Unit. As provided in Section 19(a) of this Article, a purchaser of a Unit shall be jointly and severally liable with the seller for the payment of assessments due prior to any such sale, transfer or other conveyance only if such purchase expressly assumes such obligation in writing, provided however, that the lien against any such Unit for such unpaid assessments shall remain in full force and effect.

14. No Exemption from Liability. No Unit Owner may exempt himself from liability for any assessment levied against him or his Unit by waiver of the use or enjoyment of any of the Common Elements, or by abandonment of his or its Unit or in any other way.

15. Collection of Assessments. The Board shall take prompt action to collect any assessments due from any Unit Owner which remains unpaid for more than thirty (30) days after its due date.

16. Lien for Assessments and Enforcement of Lien. All assessments (including any monthly installment of any assessment) provided for in this Article, together with late payment charges, interest and expenses, including reasonable attorney's fees (as permitted by law), relating to such assessment shall be a charge on and a continuing lien upon the Unit against which the assessment is made when a notice of such lien has been filed of record in the Office of the Clerk of Superior Court for Buncombe County, North Carolina, in the manner provided therefore by Article 8 of Chapter 44, of the North Carolina General Statutes, provided such notice of lien shall not be recorded until such sums assessed remain unpaid for a period of thirty (30) days after the same shall become due. Said notice of lien shall also secure all assessments against the Unit becoming due thereafter until the lien has been satisfied. Said lien may be foreclosed in the manner of a deed of trust on real property under a power of sale under Article 2A of Chapter 45 of the North Carolina General Statutes. The lien granted the Association for unpaid assessments in this Article shall further secure advances for taxes and payments on account of superior mortgages, liens or encumbrance which may be required to be advanced by the Association in order to preserve and protect its lien, including interest at the maximum rate of interest permitted by law on any such advances.

Following the institution of any action by the Board to foreclose on a Unit because of unpaid assessments, the Unit Owner shall pay a reasonable rental for the use of his/her or its Unit, and the plaintiff or petitioner in such foreclosure action shall be entitled to the appointment of a receiver to collect the rental. The Board, acting on behalf of the Association, or on behalf of any one or more individual Unit Owner, if so instructed, shall have the power to purchase such Unit at the foreclosure sale and to acquire, hold, lease, mortgage, convey otherwise deal with the same, subject, however, to applicable restrictions of record.

17. Personal Liability for Assessments and Suit for Such Assessments. In addition to the remedies provided in Paragraph 9 of this Article regarding liens for assessments and foreclosure of such liens, each Unit Owner shall at all times be personally liable, jointly and severally, for payment of any and all assessments made against his or its Unit becoming due and payable while he or it is the owner of such Unit. Nothing in this Article shall prevent an action by the Association against any Unit Owners to recover a money judgment for unpaid assessments. Any such action may be brought without foreclosing the lien hereinabove provided and any such action against the Unit Owner for such a money judgment shall not be waiver of the lien hereinabove provided or of the Association's right to foreclose such lien. Nor shall proceeding by foreclosing the lien against any Unit in default be deemed to be an election or waiver of the right of the Association to bring an action at law against the Unit Owner on his personal liability for such unpaid assessments.

18. Priority of Assessment Lien. The lien for assessments provided for in this Article shall be prior and superior to all other liens except (a) liens for ad valorem taxes and (b) liens for all sums unpaid on deeds of trust, mortgages or other encumbrances against the Unit recorded prior to the docketing of the assessment lien in the Office of the Clerk of Superior Court for Buncombe County, North Carolina. The sale or transfer of any Unit shall not affect the assessment lien against such Unit or the ability to record, perfect, and enforce such lien pursuant to the provisions of this Article and the Act. Provided however, the sale of a Unit pursuant to a foreclosure sale or execution sale instituted by a superior lien holder or the conveyance to a first mortgagee of a deed in lieu of foreclosure shall extinguish the inferior assessment lien against the subject Unit, however, such sale or transfer shall not relieve any Unit Owner from liability for any assessment thereafter becoming due for any future lien in connection therewith. Such extinguishment of the lien shall not in any way do away with the personal liability for such assessment of the owner(s) of the Unit when such assessment is made. The Association shall be entitled to any applicable excess, if any, realized by the sale of any Unit pursuant to a foreclosure or action instituted by a superior lien holder, to the extent of its lien.

19. Personal Liability of Transferees, Statements, Liability of Mortgagee.

(a) The personal obligation for assessments which are delinquent at the time of transfer of a Unit shall not pass to the transferee of such Unit unless said delinquent assessments are expressly assumed by said transferee. **There shall be, however, a lien upon such Unit for the amount of any such delinquent assessments, which lien shall continue and remain in place notwithstanding the conveyance of such Unit.**

(b) Any transferee referred to in (a) above shall be entitled to request and obtain from the Association a statement setting out the total of all unpaid assessments levied against a Unit. Such statement shall be executed by an officer of the Association or any other duly authorized person, and the Association shall be bound by such statement. Such transferee's Unit shall not be subject to a lien for any unpaid assessments in excess of the amount set forth on such statement.

(c) When a mortgagee or holder of a note and deed of trust, or other person claiming through such mortgagee or note holder, pursuant to the remedies provided in a deed of trust, or by foreclosure, or by deed in lieu of foreclosure, obtain title to a Unit, the liability of such mortgagee or such other person for assessments shall be only for the assessments of installments thereof; that will become delinquent, if not paid, after acquisition of title.

(d) Without releasing the transferor from any liability therefore, any unpaid portion of assessments which is not a lien because of the operation of (b) above or resulting, as provided for in (c) above from the exercise of remedies in a deed of trust or by foreclosure thereof or by deed

13

in lieu of foreclosure shall be Common Expenses collectible from all Unit Owners, including the transferee under (b) above and the mortgagee or such other person who acquires ownership as described in (c) above.

20. Special Meetings. Written notice of any special meeting shall be sent to Members not less than fifteen (15) days nor more than forty-five (45) days in advance of the meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast fifty (50%) percent of all of the votes of the membership shall constitute a quorum.

**ARTICLE VIII
MEMBERSHIP AND VOTING RIGHTS**

1. Membership. Every Owner of a Unit 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 Unit which is subject to assessment.
2. Voting Rights. Each Unit shall be entitled to one vote.

**ARTICLE IX
PROTECTIVE AND RESTRICTIVE COVENANTS**

1. All Units shall be utilized only for permanent, full time residential purposes by a single family. Units are not to be used for business or commercial purposes. However this does not prohibit private home offices that do not involve commercial traffic of any nature.
2. All Units shall be required to have a harmonious outwardly appearance.
3. No noxious or offensive activities shall be conducted in any Unit, Limited Common Element, or Common Element or Common Area, nor shall anything be done therein which may become an annoyance or nuisance to the neighborhood.
4. No Unit may be used for storage of explosives or other hazardous materials, or any other use that may violate any local, state, or federal law, or ordinance.
5. No Unit may be used for dumping, disposing, incineration, or reduction of garbage, waste, hazardous waste or hazardous substances.
6. All restrictions relating to the presence of pets and other animals in the Association shall be established by the Association in its exclusive discretion.
7. No drying or airing of any clothing or bedding shall be permitted outside any Unit.
8. No radio or television antennae shall be erected outside of any Unit within the Association, unless the placement thereof has been approved by the Association and any such antenna remains in full compliance with the FCC guidelines and/or any other applicable law or regulation.
9. No window air conditioning units shall be allowed in any Unit.

10. All motor vehicles shall be maintained in proper operating condition so as not to be a nuisance by noise, exhaust emissions or otherwise. No motor vehicles shall be driven on pathways or unpaved Common Elements or Common Areas.

11. No fence, hedge, landscaping or wall shall be erected on any Lot or outside of any Unit which shall be unsightly in the exclusive opinion of the Declarant (and the Association after the Declarant Control). Nor shall any obstruction be placed which may interfere with the vision of roads or driveways so as to endanger the safety of pedestrians or drives of vehicles. In no event shall any fence or other landscaping be erected or installed without the prior written approval of the Declarant (and the Association after the Declarant Control). Any request to erect a fence or install landscaping shall include specifics with respect to location, height and materials. The Declarant (and the Association after the Declarant Control) shall have exclusive discretion with respect to the approval of any fence or landscaping. In no event shall any fence utilizing chain link be installed on any Lot or outside of any Unit.

12. Storage, collection, and disposal of trash shall be in compliance with the rules established by the Association.

13. No burning shall be allowed.

14. Each unit will have a mail receptacle, located either at the Unit or at a common mail center to be placed within the Common Elements.

15. No Unit Owner may make any exterior changes or modifications, whether structural or aesthetic (including by way of limited example, paint), any Limited Common Element or Common Element without the prior written consent of the Board.

16. No trade materials, inventory nor supplies may be stored upon any Lot. No cars, trucks, boats, trailers, recreational vehicles, busses, campers, tractors, or other motorized vehicles may be stored or regularly parked on a Lot except in a garage or other area approved by the Declarant (and the Association after the Declarant Control). In no event shall any vehicle be parked in or otherwise obstruct any street, driveway or right of way.

17. In addition to the foregoing use restrictions, reasonable rules, and regulations not in conflict therewith and supplementary thereto may be promulgated and amended from time to time by the Board in its sole and absolute discretion.

18. All Unit Owners and Occupants shall be subject to and comply with the provisions of the Act, this Declaration, the Articles of Incorporation of the Association, the Bylaws, and the Rules and Regulations. The acceptance of a deed conveying a Unit, or entering into a lease for a Unit shall constitute agreement that such provisions are accepted and ratified by such Unit Owner or Occupant. Failure to comply shall be grounds for any action by the Association, an aggrieved Unit Owner, or any person adversely affected, for recovery of damages, injunction or other relief. The failure to enforce any right, reservation or condition contained in this Declaration, however long continued, shall not be deemed a waiver of right to do so hereafter, as to the same breach or as to a breach occurring prior to or subsequent thereto, and shall not bar or affect its enforcement. The invalidation by any court of any provisions hereof shall in no way affect any of the other provisions hereof, which shall remain in full force and effect. If the Association or any Unit Owner within the Association files suit to enforce any of the provisions contained herein, it shall be entitled to recover its costs and attorneys' fees associated therewith as a prevailing party. This is in addition to the other provisions relating to the rights and remedies of the Developer and the Association to collect assessments.

ARTICLE X **INSURANCE**

1. **Property and Casualty Insurance.** The Association shall procure and maintain property and casualty insurance on the Common Elements of the buildings, insuring against all risks of direct physical loss commonly insured against, including fire and extended coverage perils. Such policy of insurance shall be in the name of, and the proceeds thereof shall be payable to, the Association as Insurance Trustee for all Unit Owners and Security Holders as their interest may appear, which proceeds shall be disbursed pursuant to the provisions of the Act, this Declaration, and the Bylaws. Such insurance shall be in an amount equal to the full replacement costs of the Common Elements, exclusive of land, excavations, foundations, and other items normally excluded from property insurance policies and shall insure against such risk and contain such provisions including deductibles as the Board shall from time to time determine, but at a minimum shall conform in all respects to the requirements of the Act and the Bylaws and shall provide that, notwithstanding any provisions thereof that gives the insurer an election to restore or repair in lieu of making a cash settlement, such option shall not be exercisable if such repair or restoration would be prohibited by any provision of the Act. The property and casualty insurance maintained by the Association hereunder is intended for the preservation of the fair market value of Units and the Common Elements related thereto.

Each Unit Owner shall have the obligation to procure for his/her or its insurance coverage on personal property and contents located within his/her or its Unit, including but not limited to those components identified in Article III.2.

2. **Liability Insurance.** The Association shall maintain liability insurance in reasonable amounts covering all occurrences commonly insured against for death, bodily injury, and property damage arising out of or in connection with the use ownership, or maintenance of the Common Elements and covering the Association, the Board of Directors, Officers and all agents and employees of the Association and all Unit Owners an persons entitled to occupy any Unit. Such insurance shall comply with the Act and shall (i) contain a severability-of-interest endorsement precluding the insurer from denying liability because of negligent acts of any insured; and (ii) insure all of such benefited parties against such liability arising out of or in connection with the use, ownership or maintenance of the Common Elements and the driveways, sidewalks, parking areas, and public spaces adjoining the Association's property. Such insurance shall be issued on a comprehensive liability basis and shall contain cross liability endorsement under which the rights of a named insured under the policy shall not be prejudiced with respect to his or its action or claim against another named insured. The Association shall not be required to include coverage for occurrences relating to the condition or use of the Units, nor shall the Association be responsible for such uninsured occurrences. Unit Owners shall maintain liability insurance in reasonable amounts covering all occurrences commonly insured against for death, bodily injury, and property damage arising out of or in connection with the use, ownership, or maintenance of the their individual Units. The Association shall not have any duty to verify the existence of any such Owners' liability insurance.

3. **Policy Requirements.** Each policy of insurance provided for herein shall provide the following:

- (a) Each Unit Owner is an insured person under the policy to the extent of the Unit Owner's insurable interest;
- (b) The insurer waives its right to subrogation under the policy against any Unit Owner or tenant of the Unit Owner;

(c) No act or omission by any Unit Owner, unless acting within the scope of the Owner's authority on behalf of the Association, will preclude recovery under the policy; and

(d) If, at the time of a loss under the policy, there is other insurance in the name of a Unit Owner covering the same risk covered by the policy, the Association's policy provides primary insurance.

4. Payment of Insurance Premiums. The cost of premiums for the insurance policies described in this Article shall be a Common Expense.

5. Improvements. Each Unit Owner shall, upon reasonable request, provide the Association with a copy of any insurance policy held by such Owner relating to liability coverage and improvements within their Unit.

6. Insurance Trustee. All policies of casualty insurance purchased by the Association shall be for the benefit of the Association, the Unit Members and their respective mortgages, as their interest may appear, and shall provide that all proceeds covering property losses shall be paid to the Association as Insurance Trustee. All proceeds of such insurance shall be used and applied as provided for in the Act, this Declaration and the Bylaws. Insurance proceeds for any physical loss covered by the casualty insurance maintained by the Association shall be payable to the Association as Insurance Trustee and not to any Unit Owner or mortgagee or the holder of a note and deed of trust. The Association as Insurance Trustee shall hold any such insurance proceeds in trust for the Unit Owners and lien holders as their respective interest may appear. All such insurance proceeds shall be disbursed by the Insurance Trustee first for the repair or restoration of the damaged property as is provided in the Act, this Declaration, and the Bylaws, and the Unit Owners or lien holders are not entitled to receive payment for any portion of the proceeds unless there is a surplus of proceeds after the Association has been completely repaired or restored, or the Association is terminated.

7. Association as Agent. The Association is hereby irrevocably appointed Agent for each Unit Owner and for each owner and holder of a security interest, deed of trust or other lien upon any Unit, to adjust all claims arising under insurance policies purchased by the Association and to execute and deliver releases upon the payment of claims.

8. Notice of Action in Excess of Coverage. In any legal action in which the Association or the Unit Owners may be exposed to liability in excess of insurance coverage, the Association shall give notice of the exposure within a reasonable time to all Unit Owners who may be exposed to liability and such Unit Owner shall have the right to intervene and defend his or its interest.

ARTICLE XI

MAINTENANCE, REPAIR, AND RECONSTRUCTION

1. Maintenance, Repair, and Reconstruction of the Common Elements.

(a) By the Association. The management, maintenance, repair, replacement, reconstruction, alteration and improvement of the Common Elements, wherever located, shall be the responsibility of the Association and, subject to subparagraph (b) hereof, the cost and expense thereof shall be a part of the Common Expenses. All damage caused to a Unit by any work on or to the Common Elements done by or for the Association shall be repaired by the Association and the cost thereof shall be a Common Expense.

(b) By Unit Owners. Each Unit Owner shall promptly repair, replace or reconstruct, at his/her or its own expense, including all damage to the Common Elements or any Unit intentionally, unintentionally or negligently caused by such Unit Owner or any Occupant of his/her or its Unit, his/her or its guests, agents, tenants, employees, or contractors. If such Unit Owner responsible for such repair, replacement or reconstruction fails to make the necessary repairs within ten (10) days after written demand upon him or it to do so by the Association, the same may be repaired, replaced or reconstructed by the Association and the cost thereof shall be assessed against the Unit owned by such Unit Owner. If such damage is covered by insurance maintained by the Association, the insurance proceeds shall be first used for such repair, replacement or reconstruction and the Unit Owner shall be responsible for payment of all costs and expenses thereof in excess of the insurance proceeds. Any payment due under this subparagraph by such Unit Owner shall be paid upon demand from the Association and if not then paid, such amount due from the Unit Owners shall be levied as a Special Assessment against that Unit, or any other Unit, Owned by the Unit Owner. Nothing contained herein shall modify any waiver by insurance companies of rights of subrogation.

2. Duty to Repair. Each Unit Owner shall maintain his/her or its Unit at all times in a good and clean condition. Each Unit Owner shall perform promptly, at his/her or its own expense, all maintenance, repair and replacement necessary to his or its Unit which, if omitted, would affect the Association, either in its entirety or in a part belonging to other Unit Owners, every Unit Owner being expressly responsible for the damages and liability which his/her or its failure to so maintain, repair, and replace may cause. Repair and maintenance of the roof, exterior and structural components of each and all buildings shall, however, be considered a Common Expense and its maintenance shall be provided for by the Association as a Common Expense, even in instances where fewer than all Units require maintenance, repair or replacement at any time.

3. Casualty Damage or Destruction. If any Unit of the building shall be damaged or destroyed by any casualty, the Association shall provide for the prompt repair, replacement or reconstruction of the damaged improvement in a similar manner to the original construction and installation subject to the following procedure:

(a) Cost Estimates. As soon as it is practical after a casualty loss to the improvements, the Association shall obtain reliable estimates of the cost of repair, replacement or reconstruction of the damaged structures to a condition which is as good as that which existed prior to the casualty.

(b) Plans and Specifications. Any repair, replacement, or reconstruction shall be substantially in accordance with the plans and specifications of the original construction of the improvements or the Unit.

(c) Source and Allocation of Insurance Proceeds. If the proceeds of insurance available to the Association are not sufficient to defray the expense of the estimated cost of repair, replacement, or reconstruction, as determined by the Association, or if any time during the process or repair, replacement or reconstruction the funds available to the Association become insufficient to completely defray such costs, then assessments may be levied against the Unit Owners in the manner provided for herein. If there is a surplus of funds remaining after payment in full of such costs, such surplus shall become the property of the Association.

(d) Construction Fund. The Unit Owners do hereby name and constitute the Association as its trustee and attorney in fact for the purpose of adjusting and collecting the insurance proceeds and assessments collected by the Association from the Unit Owners shall constitute a construction fund which shall be disbursed in payment of the cost of repair, replacement or reconstruction

described herein. The construction fund shall be paid by the Association in appropriate progress payments to such contractors, suppliers, and personnel performing the work or supplying the materials or services for the repair, replacement and reconstruction as are designated by the Association.

4. Condemnation. In the event of a taking by eminent domain or by a conveyance in lieu thereof of part of the Association property, the same shall be repaired or restored to the greatest extent possible and the award paid on account thereof shall be used and applied in accordance with any applicable section of the Act and for the benefit of the Association.

5. Exterior Maintenance.

(a) Description of Exterior Maintenance of Each Unit. In addition to the other items set forth herein, the Association shall provide for exterior maintenance upon each Unit which is subject to this Declaration and assessment hereunder to the extent as follows: exterior paint, repair, replacement, and care of roofs, gutters, drains, exterior building surfades, lawns, shrubbery, trees, sidewalks, sewer and water systems not otherwise maintained by other private contractor or governmental entity. Exterior maintenance does not include screens or glass surfaces for windows and doors. In order to facilitate the Association's maintenance of these items, the Association is hereby granted the right of unobstructed access over and upon each Unit and Common Areas at all reasonable times to perform its maintenance as provided herein.

(b) Costs of Exterior Maintenance and Assessments Therefore. Consistent with the above, if the need for maintenance, replacement, or repair to any Unit or Common Element or Common Area is caused by the willful or negligent actions of a Unit Owner, his/her or its guests, tenants, agents, invitees, or otherwise, the cost of any such maintenance, replacement, or repair shall be added to the assessment for that Unit and subject to all the other provisions set forth herein for collection.

ARTICLE XII **TERMINATION**

The Association may be terminated only in strict compliance with the Act, provided however, that in addition to compliance with the Act, that the prior written consent of the owners or holders of first mortgages representing at least seventy-five percent (75%) of the Units shall be necessary before the Association to be terminated.

ARTICLE XIII **GENERAL PROVISIONS**

1. Duration. The covenants and restrictions contained in this Declaration shall run with the land and be binding upon and inure to the benefit of the Owners of all Units, their heirs, successors in interest and assigns, forever.

2. Amendments to Declaration. This Declaration may be amended by the Declarant as set forth herein. The Association may make amendments hereto, after the time it assumes control of the management as set forth above, but only in strict compliance with the Act, except that no amendment altering or impairing any Special Declarant Rights reserved herein may be made without the prior written consent of the Declarant.

An amendment to this Declaration may be proposed by the Board or may be proposed by any Unit Owner. Such proposed amendment shall be submitted to the President of the Association who shall take action to submit it to the Board and then to the Association. An amendment shall be effective only upon recording thereof in the Register of Deeds for Buncombe County, North Carolina.

3. Private Agreement. This Declaration does not and shall not be construed to grant any rights to the public in general.

4. Remedies for Branch. The terms and conditions of this Declaration shall be enforceable by any Owner or by the Association, by actions for specific performance or injunction, in addition to any other remedies available at law.

5. Estoppel Certificate. The Association shall, upon written request and upon payment of a reasonable fee (which shall not be more frequent than three (3) times during any calendar year) of any Owner, issue, within fifteen (15) days after receipt of such written request, an estoppel certificate stating to the best of the issuer's knowledge that as such date:

- (a) whether it knows if any default under this Declaration by the requesting party, and if there are known defaults, specifying the nature thereof;
- (b) whether this Declaration has been assigned, modified or amended in any way by it and if so, then stating the nature thereof, and
- (c) whether this Declaration is in full force and effect.

6. Notices. All notices, demands, and requests required or permitted to be given under the Declaration must be in writing and shall be deemed to have been delivered when actually received by Declarant and as to Unit Owners, shall be deemed to have delivered and received three days after deposit for First Class mail with the United States Postal Service. The initial address of the Declarant is:

Kasey-Phillips Development, LLC
1978 Hendersonville Road, Suite 10
Asheville, NC 28803

7. Subordination. Any mortgage or deed of trust affecting any Unit shall at all times be subject to and subordinate to the terms of this Declaration and any party foreclosing any such mortgage or deed of trust shall acquire title to such Unit subject to all of the terms of this Declaration. Upon a Unit Owner's request, the other Owners shall modify the Declaration to meet the reasonable requirements of a lender selected by the requesting Owner who requests such modification; provided, however, no Owner shall be obligated to consent to any modification of this Declaration that materially adversely affects an Owner's estate or rights under this Declaration. Notwithstanding anything contained herein to the contrary, any lien or security interest encumbering any Unit arising under or granted pursuant to the Declaration shall be subordinate and junior to the lien and security interest of any deed to secure debt, deed of trust or mortgage encumbering any such Unit.

8. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions of this Declaration, which shall remain in full force and effect.

9. Construction. Should any of the terms, conditions, provisions, or clauses of this Declaration conflict with any provisions of the Act, the provisions of the Act shall control unless the Act permits this Declaration to override the Act, in which event the Declaration shall control. This Declaration shall be construed and controlled by and under the laws of the State of North Carolina.

10. Interpretation. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the Association and the Unit Owners. 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 to the part in which they appear.

11. Captions. The captions herein are only for convenience and reference and do not define, limit or describe the scope of this Declaration, or the intent of any provisions.

12. Failure to Enforce Not a Waiver. No provisions contained in this Declaration shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number or violations or breaches which may occur.

IN WITNESS WHEREOF, the undersigned have executed this Agreement under seal as of the day and year first above written.

DECLARANT:

KASEY-PHILLIPS DEVELOPMENT, LLC.

By: *Gerald J. Kasey*
Gerald J. Kasey, ^{as} Member/Manager of Kasey Development Co, LLC,
as Member/Manager

HARRELL & ASSOCIATES REALTORS, LLC.

By: *Gerald J. Kasey*
Gerald J. Kasey, its Member/Manager

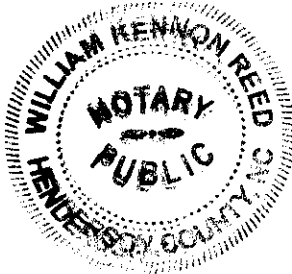
STATE OF NORTH CAROLINA
COUNTY OF BUNCOMBE

I, *William Kennon Reed* ^{*of Henderson*}, Notary Public of the County and State aforesaid, certify that Gerald J. Kasey, as Member/Manager* of Kasey-Phillips Development, LLC, a North Carolina limited liability company, personally appeared before me this day and acknowledged the execution of the foregoing instrument on behalf of the company. * Kasey Development Co, LLC, as Member/Manager

WITNESS my hand and official stamp or seal this the 30 day of August, 2006

William Kennon Reed
NOTARY

My Commission expires: 3-18-2009



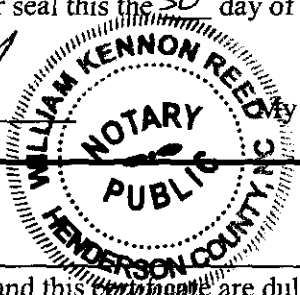
STATE OF NORTH CAROLINA
COUNTY OF BUNCOMBE

I, William Kennon Reed, Notary Public of the County and State aforesaid, certify that Gerald J. Kasey, as Member/Manager of Harrell & Associates Realtors, LLC, a North Carolina limited liability company, personally appeared before me this day and acknowledged the execution of the foregoing instrument on behalf of the company.

of Henderson

WITNESS my hand and official stamp or seal this the 30 day of August, 2006

[Handwritten Signature]



My Commission expires: 3-28-2009

NOTARY

STATE OF NORTH CAROLINA
COUNTY OF BUNCOMBE

The foregoing certificate of _____, Notary Public is certified to be correct. This instrument and this ~~certificate~~ are duly registered at the date and time and in the Book and Page shown on the first page hereof.

_____ County Register of Deeds

By: _____, Deputy/Assistant Register of Deeds

EXHIBIT A

Being all that real property set forth in the plats of survey by ~~Civil Design Concepts, P.A.~~ ^{McAbee & Associates, P.A.}, dated the ~~4th~~ ^{4th} day of ~~June 2007~~ ^{June 2008} entitled Ledbridge Vista, Ledbridge Estates -Phase 2 which are recorded in the Office of the Register of Deeds for Buncombe County Plat Book 110, at Page 197.