

**DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS**  
**FOR**  
**KINDERTON**  
**(COMMERCIAL VILLAGE CORE, PHASES 1, 2 and 3)**

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**DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS**

**FOR**

**KINDERTON**

**(COMMERCIAL VILLAGE CORE, PHASES 1, 2 and 3)**

**THIS DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS** is made this \_\_\_ day of \_\_\_\_\_, 1999 by The Hillsdale Group, LLC, a North Carolina limited liability company, (referred to herein as the “Declarant”).

Declarant is the owner of a tract of land consisting of approximately 320 acres located in Davie County, North Carolina and described in Deed Book \_\_\_, Page \_\_\_ of the Davie County Registry. The Declarant plans to develop the 320 acre tract in accordance with a master plan as a village community having residential and commercial components. The development will be known as “Kinderton.”

A portion of the tract (herein referred to as the “Properties”), consisting of 84.91 acres as described in the attached Exhibit “A”, is located between the North side of U. S. Highway 158 and the South side of Interstate 40. Declarant intends to develop the Properties in three phases as a commercial village core. The commercial village core will be part of the village community of Kinderton.

Declarant intends by this Declaration to impose upon the Properties restrictions providing for a flexible and reasonable procedure for the overall development of the Properties as a commercial village in accordance with the zoning approval and permit(s) issued by the County of Davie, and to establish a method for the administration, maintenance, use and enjoyment of the Properties.

Declarant declares that all of the Properties described in Exhibit A and any additional property later subjected to this Declaration will be held, sold, and conveyed subject to the following easements, restrictions, covenants, and conditions, which are for the purpose of protecting the value and desirability of the Properties, and which will run with the Properties and any other real property subjected to this Declaration, and which will be binding on all parties having any right, title, or interest in the Properties, or such other real property, their heirs, successors, successors-in-title, and assigns, and will inure to the benefit of each owner thereof.

This Declaration does not and is not intended to create a condominium within the meaning of the North Carolina Condominium Act, NC General Statute §47C-1-101, et seq.

## **Article I**

### **Definitions**

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*Section 1.*     “Area of Common Responsibility” means those areas designated as such on the Plat(s) of KINDERTON (COMMERCIAL VILLAGE CORE, PHASES 1, 2 and 3) including by way of illustration the streets, sidewalks, on street parking areas, parking access easements, buffer easements, landscape easements, drainage systems and easements, utility easements, and signage and sign easements, together with those areas, if any, which by the terms of this Declaration or by contract or agreement with any third party, become the responsibility of the Association. The Area of Common Responsibility shall also include those areas identified in Article IV, Section 1 hereof.

*Section 2.*     “Articles of Incorporation” or “Articles” means the Articles of Incorporation of KINDERTON (COMMERCIAL VILLAGE CORE, PHASES 1, 2, and 3) PROPERTY OWNERS ASSOCIATION, INC., when filed with the Secretary of State of the State of North Carolina.

*Section 3.*     “Assessments” means any of the Assessments the Association is permitted to levy under this Declaration as the context requires.

*Section 4.*     “Association” refers to KINDERTON (COMMERCIAL VILLAGE CORE, PHASES 1, 2, and 3) PROPERTY OWNERS ASSOCIATION, INC., a North Carolina non-profit corporation, its successors or assigns.

*Section 5.*     “Base Assessments” means Assessments levied against all Lots in the Properties to fund Common Expenses levied in accordance with Article X, Section 2, of this Declaration.

*Section 6.*     “Benefitted Assessments” means Assessments levied in accordance with Article X, Section 4, of this Declaration.

*Section 7.*     “Board of Directors” or “Board” is the body responsible for administration of the Association, selected as provided in the By-Laws and generally serving the same role as the board of directors under North Carolina corporate law.

*Section 8.*     “By-Laws” means the By-Laws of KINDERTON (COMMERCIAL VILLAGE CORE, PHASES 1, 2, and 3) PROPERTY OWNERS ASSOCIATION, INC., and incorporated herein by reference, as they may be amended from time to time.

*Section 9.*     “Class “B” Control Period” means the time set forth in Article III, Section 3 hereof.

*Section 10.*    “Common Area” means all real and personal property which the Association owns or holds from time to time for the common use and enjoyment of all Owners.

*Section 11.* “Common Expenses” means the actual and estimated expenses incurred by the Association for the general benefit of all Lot Owners, including infrastructure and streets shared with other associations in Kinderton where such infrastructure and streets are of general benefit to all of the Lot Owners as reasonably determined by the Board, and such reasonable reserve, as the Board finds necessary and appropriate pursuant to this Declaration or the By-Laws of the Association.

*Section 12.* “Community-Wide Standard” means the standard of construction, maintenance, or other activity generally prevailing throughout the Properties. Such standard may be more specifically determined by the Board of Directors and the Architectural Review Committee pursuant to Article XI hereof. Such standard may not be reduced below that standard established by the Declarant as of the termination of the Class “B” Control Period.

*Section 13.* “Declarant” means The Hillsdale Group, LLC, or its successors, successors-in-title or assigns who take title to any portion of the property described on Exhibit “A” for the purpose of development and/or sale and are designated as the Declarant hereunder in a recorded instrument executed by the immediately preceding Declarant.

*Section 14.* “Lot” means separately platted lots within the Properties intended for commercial development. The term includes all portions of the lot owned and all structures thereon.

*Section 15.* “Member” means a Person entitled to membership in the Association, as provided herein and includes both Class “A” Members and the Class “B” Member.

*Section 16.* “Owner” means one or more Persons, including the Declarant, who hold the record title to any Lot, but excluding any party holding merely a security interest in the lot. If a Lot is sold under a recorded contract of sale, and the contract specifically so provides, then the named purchaser will be considered the Owner.

*Section 17.* “Person” means a natural person, a corporation, a partnership, a limited liability company, a trustee, or any other legal entity.

*Section 18.* “Plats” means the Plats of the Properties and the Lots as may be recorded in the office of the Register of Deeds of Davie County from time to time.

*Section 19.* “Properties” means the real property described in Exhibit “A” attached hereto, together with such additional property later subjected to this Declaration by Supplemental Declaration.

*Section 20.* “Special Assessments” means Assessments levied in accordance with Article X, Section 3, of this Declaration.

*Section 21.* “Structure” means any structure or building constructed on a Lot.

*Section 22.* “Supplemental Declaration” means an amendment or supplement to this Declaration which subjects additional property to this Declaration and/or imposes, expressly or by reference, additional restrictions and obligations on the land described therein. The term shall also refer to any instrument recorded by the Association pursuant to Article VIII. Additional property may only be annexed as provided by the terms of this Declaration.

*Section 23.* “Voting Member” means a member of the Association entitled to vote on a particular matter.

## **Article II** **Property Rights**

*Section 1. General.* Every Owner shall have, as a right appurtenant, a nonexclusive easement of use, access and enjoyment in and to the Common Area, subject to:

- (a) this Declaration as it may be amended from time to time and to any restrictions or limitations contained in any deed conveying such property to the Association;
- (b) the right of the Board to adopt rules regulating the use and enjoyment of the Common Area;
- (c) such other rights granted the Association hereunder.

## **Article III** **Membership and Voting Rights**

*Section 1. Membership.* Every Owner, including the Declarant, shall have a membership in the Association for each Lot owned. In the event the Owner of a Lot is more than one Person, votes and rights of use and enjoyment will be as provided herein. The membership rights of a Lot owned by a corporation or partnership will be exercised by the individual designated from time to time by the Owner in a written instrument provided to the Secretary of the Association.

*Section 2. Voting.* The Association initially will have two classes of membership--Class “A” and Class “B”:

- (a) Class “A”. Class “A” Members shall be all Owners with the exception of the Class “B” Member for so long as such Class “B” membership exists. Class “A” Members shall be entitled to one equal vote for each Lot owned. Where more than one Person owns an interest in a Lot, the vote for such Lot will be exercised as those Persons determine among themselves and advise the Secretary of the Association in writing prior to any meeting. In the absence of such advice, the Lot’s vote will be suspended if more than one Person seeks to exercise it.

(b) Class "B". The Declarant is the Class "B" Member. The Class "B" Member is entitled to one equal vote for each Lot owned. The additional rights of the Class "B" Member, including the right to approve actions taken under this Declaration and the By-Laws, are specified elsewhere in the Declaration and the By-Laws. The Class "B" Member is entitled to appoint a two-thirds (2\3) majority of the members of the Board of Directors during the Class "B" Control Period. Failure of the Class "B" Member to exercise such power within thirty (30) days of the opening of such a position constitutes a waiver of that power entitling the Class "A" Members to exercise such power. The Class "B" membership terminates and converts to Class "A" membership upon the expiration of the Class "B" Control Period.

*Section 3. Class "B" Control Period.* The Class "B" Control Period lasts until the first to occur of the following:

- (a) when the Declarant no longer owns any portion of the Properties; or
- (b) when, in its discretion, the Class "B" Member so determines in a writing duly recorded in the Office of the Register of Deeds of Davie County.

#### **Article IV** **Maintenance**

*Section 1. Association's Responsibility.* The Association will maintain and keep in good repair the Area of Common Responsibility. The Area of Common Responsibility includes, but is not be limited to:

- (a) all landscaping, lawns, and other structures and improvements situated upon the Common Area;
- (b) landscaping within public rights-of-way within or abutting the Properties, landscaping within landscaping easements and buffer areas within the Properties, and landscaping within any public utility easement within the Properties (subject to the terms of any easement agreement relating thereto);
- (c) all streets (except state maintained streets), sidewalks, on street parking areas, parking access easements, common area signs, signage easements, buffer and landscape easements;
- (d) all parking areas, for purposes of snow and ice removal, general cleaning, and paving and re-paving; and

(e) such portions of any additional property included within the Area of Common Responsibility as may be dictated by this Declaration, or any Supplemental Declaration, or any contract or agreement for maintenance thereof entered into by the Association.

The Area of Common Responsibility will not be reduced by any means except with the prior written approval of the Declarant. The Association may maintain property which it does not own, including, property dedicated to the public, if the Board of Directors determines that such maintenance is necessary or desirable to maintain the Community-Wide Standard.

*Section 2. Owner's Responsibility.* Each Owner shall maintain its Lot and all structures, parking areas and parking easement areas (other than parking access easement areas and except as provided in Section 1(d) above), and other improvements comprising the Lot, including necessary repairs and replacements. In addition to any other enforcement rights available to the Association, if any Owner fails properly to perform the Owner's maintenance responsibility, the Association may perform it and assess all costs it incurs against the Lot and its Owner in accordance with Article X, Section 4 of this Declaration. Except when entry is required due to an emergency situation, the Association shall afford the Owner reasonable notice and an opportunity to cure the problem prior to entry.

*Section 3. Standard of Performance.* All maintenance will be performed in a manner consistent with the Community-Wide Standard and all applicable covenants. Neither the Association nor an Owner shall be liable for any damage or injury occurring on, or arising out of the condition of, property which it does not own except to the extent that it has been negligent in the performance of its maintenance responsibilities hereunder.

## **Article V** **Insurance and Casualty Losses**

*Section 1. Association Insurance.* The Board shall obtain blanket "all-risk" property insurance, if reasonably available, providing full replacement cost coverage (less a reasonable deductible) for all insurable improvements on the Common Area and on other portions of the Area of Common Responsibility to the extent that the Association has assumed responsibility for maintenance, repair and/or replacement thereof in the event of a casualty.

The Board shall also obtain public liability insurance covering the Area of Common Responsibility, insuring the Association and its Members for all damage or injury caused by the negligence of the Association, any of its Members, its employees, agents, or contractors while acting on behalf of the Association.

Premiums for all insurance on the Area of Common Responsibility will be Common Expenses and shall be included in the Base Assessment.

The policies may contain a reasonable deductible. In the event of an insured loss, the deductible will be treated as a Common Expense in the same manner as the premiums for the applicable insurance coverage. However, if the Board reasonably determines after notice and an opportunity to be heard in accordance with Article III, Section 22 of the By-Laws, that the loss is the result of the negligence or willful conduct of one or more Lot Owners, then the Board may specifically assess the full amount of such deductible against such Owner(s) and their Lots pursuant to Article X, Section 4.

The Association may also obtain such other insurance as it deems appropriate as a Common Expense, including worker's compensation insurance, directors' and officers' liability coverage, if reasonably available, and a fidelity bond or bonds, if reasonably available, covering all persons responsible for handling Association funds.

*Section 2. Individual Insurance.* Each Owner shall acquire and maintain blanket "all-risk" property insurance on its Lot(s) and structures constructed thereon providing full replacement cost coverage (less a reasonable deductible). The Association may take action to monitor and enforce this covenant, and may require Owners to provide copies of such policies or other evidence of such insurance upon request.

*Section 3. Damage and Destruction, Repair.*

(a) In the event of damage to or destruction of any structure on a Lot, the Owner will elect either to (i) proceed promptly to repair or to reconstruct the damaged structure in a manner consistent with the original construction or such other plans and specifications as are approved in accordance with Article XI of this Declaration or to (ii) proceed promptly to demolish the structures on the Lot, clear the Lot of debris, and place the Lot on the market for sale at a fair market price and will accept a fair market price for the purchase of the Lot. If the Owner elects to repair, the Owner will pay any costs of repair or reconstruction which are not covered by insurance proceeds.

(b) Immediately after damage or destruction to all or any part of the Properties covered by insurance written in the name of the Association, the Board of Directors will proceed with the filing and adjustment of all claims arising under such insurance, will obtain estimates of the cost of repair or reconstruction of the damaged or destroyed property, and will repair or reconstruct the damaged property to substantially the same condition in which it existed prior to the damage, allowing for any changes or improvements necessitated by changes in applicable building codes, unless the Board determines that such repair or replacement is not reasonably necessary.

(c) If it is determined that the damage or destruction to the Common Area will not be repaired or reconstructed and no alternative improvements are authorized, the affected portion of the Properties will be cleared of all debris and ruins. Thereafter the Properties shall be maintained by the Association in a neat and attractive, landscaped condition

consistent with the Community-Wide Standard.

(d) If the insurance proceeds are insufficient to defray the costs of repairing or reconstructing the damage to the Common Area, the Board of Directors will, without the necessity of a vote of the Voting Members, levy a special Assessment against those Lot Owners responsible for the premiums for the applicable insurance coverage under Section 1 of this Article. Additional Assessments may be made in like manner at any time during or following the completion of any repair or reconstruction.

*Section 4. Subrogation.* To the extent permitted by law, the Association and each Lot Owner, for themselves, their successors and assigns, waives all subrogation rights for any loss or damage arising out of any matter for which there are valid and collectible insurance policies covering the loss or damage to the extent of any recovery collectible under such insurance. The Association and the Lot Owners will use their best efforts to have any and all insurance required of them under this Declaration endorsed with the following subrogation clause: *“This insurance shall not be invalidated should the insured waive prior to a loss any or all right of recovery against any party for loss occurring on matters insured hereby to the extent of the coverage provided under this insurance”*.

#### **Article VI** **No Partition**

There shall be no judicial partition of the Common Area, nor shall any Person acquiring any interest in the Properties seek any judicial partition unless the Properties have been removed from the provisions of this Declaration. This Article shall not be construed to prohibit the Board of Directors from acquiring and disposing of tangible personal property nor from acquiring title to real property which may or may not be subject to this Declaration.

#### **Article VII** **Condemnation**

If all or any part of the Common Area is taken or conveyed due to condemnation or threat thereof, the award made for such taking shall be payable to the Association to be used by the Board of Directors as it deems appropriate to restore or replace such common area and facilities to the extent land is available therefore. If the Board of Directors decides not to repair or restore, or if there are net funds remaining after any such restoration or replacement is completed, then the funds will be retained by the Association and used for such purposes as the Board of Directors determines appropriate.

#### **Article VIII** **Annexation of Additional Property**

*Section 1. Annexation Without Approval of Membership.* The Declarant, its successors and assigns, shall have the unilateral right, privilege, and option, from time to time at any time until December 31, 2018, to cause other commercial real property adjoining the properties described herein to become subject to the provisions of this Declaration and the jurisdiction of the Association by filing in the public registry for Davie County, North Carolina, a Supplemental Declaration annexing such property. An annexation will be effective upon the filing for record of such Supplemental Declaration unless otherwise provided therein.

*Section 2. Acquisition of Additional Common Area.* Declarant may convey to the Association additional real estate, improved or unimproved, located within the properties described in Exhibit "A" which will be maintained thereafter by the Association at its expense for the benefit of all its Members, subject to any restrictions or limitations set forth in the deed of conveyance.

*Section 3. Additional Covenants and Easements.* The Declarant may unilaterally subject any portion of the property subjected to this Declaration initially or by Supplemental Declaration to additional covenants and easements, including covenants obligating the Association to maintain and insure such property on behalf of the Owners and obligating such Owners to pay the costs incurred by the Association through Assessments. Such additional covenants and easements shall be set forth in a Supplemental Declaration filed either concurrent with or after the annexation of the subject property, and shall require the written consent of the owner(s) of such property, if other than the Declarant. All additional covenants will be for the mutual benefit of all Lots within the Properties and may be enforceable by any Owner.

*Section 4. Amendment.* This Article shall not be amended without the prior written consent of Declarant, so long as the Declarant owns any portion of the Properties.

## **Article IX**

### **Rights and Obligations of the Association**

*Section 1. Common Area.* The Association, subject to the rights of the Owners set forth in this Declaration, will be responsible for the exclusive management and control of the Common Area and all improvements and landscaping thereon, and will keep the Common Area in good, clean, attractive, and sanitary condition, order, and repair, pursuant to the terms and conditions hereof and consistent with the Community-Wide Standard.

*Section 2. Personal Property and Real Property for Common Use.* The Association, through action of its Board of Directors, may acquire, hold, and dispose of tangible and intangible personal property and real property. The Board, acting on behalf of the Association, will accept any real or personal property, leasehold, or other property interests within the Properties conveyed to it by the Declarant.

*Section 3. Rules and Regulations.* The Association, through its Board of Directors, may make and enforce reasonable rules and regulations governing the use of the Properties, which rules and regulations will be consistent with the rights and duties established by this Declaration. Such regulations and use restrictions shall be binding upon all Owners, occupants, invitees, permittees, and licensees, if any, until and unless modified in a regular or special meeting of the Association by the vote of Voting Members representing a majority of the total Class "A" votes in the Association and by the Class "B" Member, so long as such membership exists.

*Section 4. Areas of Common Responsibility.* The Association shall make and enforce all necessary rules and regulations necessary to carry out its duties regarding maintenance of the area of common responsibility.

*Section 5. Enforcement.* The Association may impose sanctions for violations of this Declaration, the By-Laws, or rules and regulations. Sanctions may include reasonable monetary fines and suspension of the right to vote and to use facilities on the Common Area. In addition, the Association, through the Board, in accordance with Article III, Section 22 of the By-Laws, has the right to exercise self-help to cure violations, and is entitled to suspend any services provided by the Association to any Owner or such Owner's Lot in the event that such Owner is more than thirty days delinquent in paying any Assessment or other charge due to the Association. The Board may seek relief in any court for violations or to abate nuisances. Sanctions shall be imposed as provided in the By-Laws.

The Association, through the Board, by contract or other agreement, has the right, but not the obligation, to enforce county and municipal ordinances and will permit the counties or municipalities to enforce ordinances on the Properties for the benefit of the Association and its Members.

*Section 6. Implied Rights.* The Association may exercise any other right or privilege given to it expressly by this Declaration or the By-Laws, and every other right or privilege reasonably to be implied from the existence of any right or privilege given to it herein or reasonably necessary to effectuate any such right or privilege.

*Section 7. Indemnification.* The Association will indemnify every officer, director, and committee member against any and all expenses, including counsel fees, reasonably incurred by or imposed upon such officer, director, or committee member in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board of Directors) to which he or she may be a party by reason of being or having been an officer, director, or committee member.

The officers, directors, and committee members shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct, or bad faith. The officers and directors shall have no personal liability with respect to any contract or other commitment made by them in good faith on behalf of the Association. The Association will indemnify and forever hold each such officer and director free and harmless against

any and all liability to others on account of any such contract or commitment. Any right to indemnification provided for herein shall not be exclusive of any other rights to which any present or former officer, director, or committee member may be entitled. The Association will, as a Common Expense, maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such insurance is reasonably available.

Nothing in this Article IX shall be interpreted to relieve any officer, director, or committee member from any duty, obligation, or responsibility imposed on them hereunder.

## **Article X** **Assessments**

*Section 1. Creation of Assessments.* The Association is authorized to levy Assessments for any and all expenses incurred or anticipated to be incurred by the Association in performing its responsibilities and exercising its rights and powers under this Declaration, any Supplemental Declaration, and under the By-Laws.

There shall be three (3) types of Assessments: (i) Base Assessments (sometimes referred to in the By-Laws as "Annual Assessments") as described in Section 2 below to fund Common Expenses for the benefit of all Members of the Association; (ii) Special Assessments as described in Section 3 below; and (iii) Benefitted Assessments as described in Section 4 below. Each Owner, by acceptance of a deed or recorded contract of sale for any portion of the Properties, is deemed to covenant and agree to pay these Assessments. This covenant is appurtenant to the land and will pass to each Owner's successors-in-title.

Any Assessment or installment thereof which is delinquent for a period of fifteen (15) days shall incur a late charge in the amount of four (4%) percent of the principal amount past due. All Assessments, together with interest (at a rate determined by the Board from time to time, but not to exceed the lesser of sixteen (16%) percent or the highest rate allowed by North Carolina law) as computed from the date the delinquency first occurs, late charges (subject to the limitations of North Carolina law), costs, and reasonable attorney fees, will be a charge on the land and will be a continuing lien upon the Lot against which each Assessment is made until paid. Each such Assessment, together with interest, late charges, costs, and reasonable attorney fees, will also be the personal obligation of the Person who was the Owner of such Lot at the time the Assessment arose, and, in the event of a transfer of title, if expressly agreed, his or her grantee shall be jointly and severally liable for such portion thereof as may be due and payable at the time of conveyance, except no holder of a first lien Deed of Trust who obtains title to a Lot pursuant to the remedies provided in the Deed of Trust shall be liable for unpaid Assessments which accrued prior to such acquisition of title.

The Association will, upon demand at any time, furnish to any Owner liable for any type of Assessment a certificate in writing signed by an officer of the Association setting forth whether such

Assessment has been paid as to any particular Lot. Such certificate will be conclusive evidence of payment to the Association of any Assessments therein stated to have been paid. The Association may require the advance payment of a processing fee for the issuance of such certificate.

Assessments shall be paid in such manner and on such dates as may be fixed by the Board of Directors. Each Owner, by acceptance of the deed to its Lot, acknowledges that all Base Assessments levied hereunder are annual Assessments due and payable monthly. Each Owner purchasing a Lot directly from the Declarant by acceptance of a deed to the Lot acknowledges the obligation to pay in full any balance due under any Assessment upon transfer of title.

No Owner may waive or otherwise exempt itself from liability to pay Assessments. The obligation to pay Assessments is a separate and independent covenant on the part of each Owner. No diminution or abatement of an Assessment or set-off will be claimed or allowed by reason of any alleged failure of the Association or the Board to take some action or perform some function required to be taken or performed by the Association or Board under this Declaration or the By-Laws, or for inconvenience or discomfort arising from the making of repairs or improvements which are the responsibility of the Association, or from any action taken to comply with any law, ordinance, or with any order or directive of any county, municipal or other governmental authority.

*Section 2. Base Assessments.*

(a) Levy. Base Assessments shall be levied on all Lots within the Properties as shown on the recorded Plats thereof. In determining the total number of Lots subject to the Declaration, the Board will take into account the number of Lots subject to the Declaration on the first day of the fiscal year for which the budget is prepared and may, in its discretion, take into account, on an adjusted basis, the number of Lots reasonably anticipated to be subjected to the Declaration during the fiscal year.

\* (b) Common Expense Budget, Notice. At least sixty days before the beginning of each fiscal year, the Board will prepare a budget covering the estimated Common Expenses of the Association for the up-coming fiscal year. The budget will include a capital contribution establishing a reserve fund in accordance with a budget separately prepared as provided in section 6 of this Article. The Board, in its discretion, may also consider other funds available to the Association. The budget will include, by way of illustration, estimates for construction, maintenance and repair of the Common Areas including: areas designated as "Common Areas" on the Plats of the Properties, streets, sidewalks, on street parking areas, buffer and landscaping easements areas, signage and sign easement areas and the signs in these areas, utility easements, etc., and Common Expenses for common areas shared with other associations in Kinderton. Expenses for construction, maintenance and repair of Lots and any improvements and landscaping thereto, and for construction, maintenance and repair of parking easement areas as shown on the Plats of the Properties are not Common Expenses but are the responsibility of the Lot Owner.

At least thirty days prior to the beginning of each fiscal year, the Board will deliver to each Owner a copy of the Common Expense budget and a notice of the amount of the Base Assessment to be levied against each Lot for the following year. Any annual increase of the budget in excess of ten percent must be approved at a meeting of the Association by the affirmative vote of two-thirds of the votes cast at such a meeting by the Voting Members. Voting Members representing sixty percent of the total eligible vote of the Association will constitute a quorum at such a meeting. Should such a quorum not be attained, the quorum requirement at any meeting subsequently convened for such purpose will be reduced to thirty percent of the total number of eligible votes.

Notwithstanding the foregoing, however, in the event the proposed budget is disapproved or the Board fails for any reason so to determine the budget for any year, then and until such time as a budget has been determined as provided herein, the budget in effect for the immediately preceding year will continue for the current year.

(c) Computation of Base Assessment Per Lot. The Base Assessment to be levied against each Lot for the up-coming year shall be determined by the following formula:

**1. *Step 1. Square Footage Assessment Amount. Divide the total Common Expense Budget by the total aggregate square footage of the Lots subject to the Declaration as shown on the recorded Plats of the Properties. The quotient equals the Per Square Footage Assessment Amount.***

**2. *Step 2. Assessment Per Lot. Multiply the Per Square Footage Assessment Amount by the square footage of each Lot. The product equals the Base Assessment per Lot.***

(d) Payment of Base Assessments. Base Assessments shall be paid monthly on the first day of each month unless the Board specifies otherwise.

*Section 3. Special Assessments.*

(a) Unbudgeted Expenses. In addition to the Base Assessments authorized hereunder, the Association may levy Special Assessments from time to time to cover unbudgeted expenses or expenses in excess of those budgeted. Such Special Assessment may be levied against the entire membership, if such Special Assessment is for general Common Expenses. Except as otherwise specifically provided in this Declaration, any Special Assessment shall have the affirmative vote or written consent of two-thirds of the Voting Members representing at least two-thirds of the total votes allocated to Lots which will be subject to such Special Assessment, and the affirmative vote or written consent of the Class "B" Member, if such exists. Special Assessments shall be payable in such manner and at such times as determined by the Board, and may be payable in installments extending beyond the fiscal year in which the Special Assessment is approved, if the Board so

determines.

(b) Costs to Cure Non-compliance. The Association may levy a Special Assessment against any Lot to reimburse the Association for costs incurred in bringing the Lot into compliance with the provisions of the Declaration, any applicable Supplemental Declaration, the Articles, the By-Laws, and the Association rules and regulations. Such Special Assessments may be levied upon the vote of the Board after notice to the Lot Owner and an opportunity for a hearing.

*Section 4. Benefitted Assessments.* The Board has the power to specifically assess expenses of the Association in the amount of the benefit received against Lots receiving benefits, items, or services not provided to all Lots within the Properties (1) that are incurred upon request of the Owner of a Lot for specific items or services relating to the Lot or (2) that are incurred as a consequence of the conduct of less than all Owners, their licensees, invitees, and permittees.

*Section 5. Lien for Assessments.* The Association shall have a lien against any Lot to secure payment of delinquent Assessments, including interest, late charges (subject to the limitations of North Carolina law), and costs (including attorneys fees). Such lien shall be prior and superior to all other liens, except (a) the liens of all taxes, bonds, Assessments, and other levies which by law would be superior, and (b) the lien or charge of any first Deed of Trust of record (meaning any recorded Deed of Trust with first priority over other Deed of Trusts) made in good faith and for value. Such lien, when delinquent, may be enforced by suit, judgment, and foreclosure in the same manner as mechanics' and materialmen's liens under North Carolina law.

The Association, acting on behalf of the Owners, has the power to bid for the Lot at the foreclosure sale and to acquire, hold, lease, mortgage, and convey the Lot. During the period in which a Lot is owned by the Association following foreclosure: (a) no right to vote shall be exercised on its behalf; (b) no Assessment shall be levied on it; and (c) each other Lot shall be charged, in addition to its usual Assessment, its equal pro rata share of the Assessment that would have been charged such Lot had it not been acquired by the Association as a result of foreclosure. Suit to recover a money judgment for unpaid Common Expenses and attorney's fees shall be maintainable without foreclosing or waiving the lien securing the same.

The sale or transfer of any Lot will not affect the Assessment lien or relieve such Lot from the lien for any Assessments thereafter becoming due. However, the sale or transfer of any Lot pursuant to foreclosure of a first Deed of Trust will extinguish the lien as to any installments of such Assessments which became due prior to such sale or transfer. Where the holder of a first Deed of Trust of record or other purchaser of a Lot obtains title pursuant to foreclosure of the Deed of Trust, it will not be personally liable for the share of the Common Expenses or Assessments by the Association chargeable to such Lot which became due prior to such acquisition of title. Such unpaid share of Common Expenses or Assessments will be deemed to be Common Expenses collectible from Owners of all the Lots, including such acquirer, its successors and assigns.

*Section 6. Reserve Budget and Capital Contribution.* The Board of Directors will annually prepare a reserve budget to take into account the number and nature of replaceable assets, the expected life of each asset, and the expected repair or replacement cost. The Board will set the required capital contribution in an amount sufficient to permit meeting the projected needs of the Association, as shown on the budget, with respect both to amount and timing by annual Assessments over the period of the budget. The capital contribution required, if any, will be fixed by the Board and included within and distributed with the applicable budget and notice of Assessments and subject to any approval requirements, as provided in Sections 2 and 3 of this Article.

*Section 7. Date of Commencement of Assessments.* The obligation to pay the Assessments shall commence as to each Lot owner, other than the Declarant, upon the transfer of title from the Declarant to the Lot owner. The Board may vary from time to time the manner and schedule when Assessments will be due and payable.

*Section 8. Failure to Assess.* The omission or failure of the Board to fix the Assessment amounts or rates or to deliver or mail to each Owner an Assessment notice will not be deemed a waiver, modification, or a release of any Owner from the obligation to pay Assessments. In such event, each Owner will continue to pay annual Assessments on the same basis as for the last year for which an Assessment was made, if any, until a new Assessment is made, at which time any shortfalls in collections may be assessed retroactively by the Association.

*Section 9. Exempt Property.* Notwithstanding anything to the contrary herein, the following property is exempt from payment of Assessments.

- (a) all Common Area; and
- (b) all property dedicated to and accepted by any governmental authority or public utility, including, without limitation, public streets, and public parks, if any.

## **Article XI** **Architectural Standards**

*Section 1. General.* No exterior alteration or modification of any Structure whether now existing or hereafter constructed, no construction of any kind, and no landscaping, will take place except as approved by the appropriate committee in strict compliance with this Article and the Community-Wide Standards as established by the Board and the Architectural Review Committee. The Board may establish reasonable fees, payable in advance, to be charged by the committees on behalf of the Association for review of applications hereunder.

This Article does not apply to the activities of the Declarant, nor to construction or improvements or modifications to the Common Area by or on behalf of the Association.

This Article may not be amended without the Declarant's written consent so long as the Declarant owns any land subject to this Declaration or subject to annexation to this Declaration.

*Section 2. Architectural Review.* Responsibility for administration of the Architectural Guidelines, as defined below, and review of all applications for construction and modifications under this Article will be handled by two committees, as described in subsections (a) and (b) of this Section 2. The members of the Committees need not be Members of the Association or representatives of Members, and may, but need not, include architects, engineers or similar professionals, whose compensation, if any, will be established from time to time by the Board of Directors. The Board of Directors may establish reasonable fees to be charged by the committees on behalf of the Association for review of applications hereunder and may require such fees to be paid in full prior to review of any application.

(a) Architectural Review Committee. The Architectural Review Committee (ARC) must consist of at least three, but not more than five, persons and has exclusive jurisdiction over all original construction on any portion of the Properties. Until the Class "B" Control Period expires, the Declarant retains the right to appoint all members of the ARC who will serve at the discretion of the Declarant. There will be no surrender of this right prior to that time except in a written instrument in recordable form executed by Declarant. Upon the expiration of such right, the Board of Directors will appoint the members of the ARC, who will serve and may be removed at the discretion of the Board.

(b) Modifications Committee. The Board of Directors may establish a Modifications Committee (MC) to consist of at least three and no more than five persons, all of whom will be appointed by, and will serve at the discretion of, the Board of Directors. Members of the MC may include architects or similar professionals who are not Members of the Association. The MC, if established, will have exclusive jurisdiction over modifications, additions, or alterations made on or to existing Lots or structures containing Lots and the open space, if any, appurtenant thereto pursuant to standards and procedures it has developed consistent with those of the ARC. Notwithstanding the above, the ARC has the right to veto any action taken by the MC which the ARC determines, in its sole discretion, to be inconsistent with the guidelines promulgated by the ARC.

(c) Interior Modifications. Nothing contained herein will be construed to limit the right of an Owner to remodel the interior of any Structure constructed on its Lot.

*Section 3. Guidelines and Procedures.* The Declarant shall prepare design and development guidelines and applications and review procedures (the "Architectural Guidelines") which will be applicable to all construction activities within the Properties and which will become part of the Community-Wide Standards.

The ARC, acting on behalf of the Board, will adopt such Architectural Guidelines at its initial organizational meeting and, thereafter shall have sole and full authority to amend them from time

to time, without the consent of the Owners. Amendments shall affect construction begun after the date of the amendment.

The Architectural Guidelines will be available to all persons who plan to construct improvements upon a Lot in the Properties. All construction will be conducted in strict accordance with the Architectural Guidelines. The Architectural Guidelines may be recorded in the Office of the Register of Deeds of Davie County, North Carolina, in which event the recorded version, as it may unilaterally be amended from time to time by the ARC by recordation of amendments thereto, will control in the event of any dispute as to which version of the Architectural Guidelines was in effect at any particular time.

The MC may promulgate application and review procedures and design standards governing its area of responsibility. Such standards will be consistent with those set forth in the Architectural Guidelines. Plans and specifications showing the nature, kind, shape, color, size, materials, and location of such modifications, additions, or alterations, will be submitted to the MC for approval as to quality of workmanship and design and as to harmony of external design with existing structures, and as to location in relation to surrounding structures, topography, and finishing grade elevation. No permission or approval will be required to repaint in accordance with an originally approved color scheme, or to rebuild in accordance with originally approved plans and specifications.

In the event that the ARC or MC fails to act upon any completed application within fifty days, or within the specified period of time designated in the Architectural Guidelines, the application will be deemed approved. However, no approval, whether expressly granted or deemed granted pursuant to the foregoing, shall permit construction inconsistent with the Architectural Guidelines unless a variance has been granted in writing by the ARC pursuant to Section 5 below.

*Section 4. No Waiver of Future Approvals.* The approval of either the ARC or MC of any matter requiring the approval and consent of such Committee, will not be deemed to constitute a waiver of any right to withhold approval or consent as to any similar matter subsequently or additionally submitted for approval or consent.

*Section 5. Variance.* The ARC may authorize variances from compliance with any of its guidelines and procedures as it deems reasonable and appropriate.

*Section 6. Limitation of Liability.* Review and approval of any application pursuant to this Article is made on the basis of aesthetic considerations only and neither the ARC or MC shall bear any responsibility for ensuring the structural integrity or soundness of approved construction or modifications, nor for ensuring compliance with building codes and other governmental requirements. Neither the Declarant, the Association, the Board of Directors, any committee, or member of any of the foregoing shall be held liable for any injury, damages or loss arising out of the manner or quality of approved construction on or modifications to any Lot.

*Section 7. Enforcement.* Any construction, alteration, or other work (collectively

“construction”) done in violation of this Article will be deemed to be nonconforming. Upon written request from the Board or the Declarant, Owners will, at their own cost and expense, remove such construction and will restore the land to substantially the same condition as existed prior to the construction. Should an Owner fail to remove and restore as required hereunder, the Association, acting through its directors or the Board's designees, will have the right to enter the property, remove the violation, and restore the property to substantially the same condition as existed prior to the construction. All costs, together with the interest at the maximum rate then allowed by law, may be assessed against the benefitted Lot and collected as a Special Assessment pursuant to Article X, Section 3 hereof.

Review of all applications and enforcement of all provisions of the Architectural Guidelines shall be conducted reasonably and undertaken in good faith.

Any contractor, subcontractor, agent, employee, or other invitee of an Owner who fails to comply with the terms and provisions of this Article and the Architectural Guidelines may be excluded by the Board from the Properties, subject to the notice and hearing procedures contained in the By-Laws. In such event, neither the Association, its officers, or directors shall be held liable to any Person for exercising the rights granted by this paragraph.

In addition to the foregoing, the Association has the authority and legal standing, acting through the Board, to pursue all legal and equitable remedies available to enforce the provisions of this Article and the decisions of the ARC and MC.

## **Article XII** **Use Restrictions**

The Properties shall be used only for commercial and related purposes as may more particularly be set forth in this Declaration and amendments hereto. Any Supplemental Declaration or additional covenants imposed on the property may impose stricter standards than those contained in this Article. **Notwithstanding any other provision herein, neither the Properties nor any Lot shall be used for a purpose not permitted by the Special Use Zoning District Permit granted the Declarant by the County of Davie and entitled “*THE HILLSDALE GROUP CONDITIONS OF REZONING*” as the same may be amended by the County of Davie from time to time.** The Association has the power and legal standing, acting through the Board, to pursue all legal and equitable remedies available to enforce the provisions of this Article.

The Association, acting through its Board of Directors, has the authority to make and to enforce standards and restrictions governing the use of the Properties, in addition to those contained herein, and to impose reasonable user fees for use of Common Area facilities. Such regulations and use restrictions shall be binding upon all Owners, occupants, permittees, invitees and licensees until and unless overruled in a regular or special meeting of the Association by the vote of a majority of the Voting Members and by the Class “B” Member, so long as such Class “B” membership exists.

*Section 1. Signs.* All signs shall comply with the stricter of the applicable Davie County Zoning provisions or the provisions of this Declaration. No sign of any kind will be erected within the Properties without the written consent of the Architectural Review Committee (ARC), except entry and directional signs installed by Declarant, one temporary “for sale” sign not larger than five (5) square feet, one temporary sign not larger than five (5) square feet advertising builders and lenders during the construction period, and one sign not larger than two (2) square feet identifying an Owner of a Lot. If permission is granted to any Person to erect a sign within the Properties, the ARC reserves the right to restrict the size, color, lettering and placement of such sign. The ARC and Declarant has the right to erect signs as they, in their discretion, deem appropriate. Notwithstanding the above, no signs, flags, banners or similar items advertising or providing directional information with respect to activities being conducted outside the Properties shall be permitted within the Properties. A temporary sign permitted hereunder will be removed immediately upon completion of the event being signified by the sign.

*Section 2. Parking and Prohibited Vehicles.*

(a) *Parking.* On street parking areas, as shown on the Plats of the Properties, will be available for the use of the general public, the Declarant, Lot owners, and the employees, permittees and invitees of the Declarant and Lot owners. Private parking areas will benefit the Lots of which they are a part as shown on the Plats of the Properties and will be available to the particular Lot owner’s employees, permittees and invitees during the regular normal business hours of the Lot Owner and to the general public after such hours. Private parking areas are subject to easements as provided for in this Declaration.

(b) *Prohibited Vehicles.* Stored vehicles and vehicles which are either obviously inoperable or do not have current operating licenses shall not be permitted on the Properties. A vehicle will be considered “stored” if it is put up on blocks or covered with a tarpaulin and remains on blocks or so covered for fourteen consecutive days. Construction, service and delivery vehicles may be parked on the Properties during business hours for such period of time as is reasonably necessary to provide service or to make a delivery to a Lot or the Common Areas. Any vehicle parked in violation of this Section or parking rules promulgated by the Board may be towed.

*Section 3. Occupants Bound.* All provisions of the Declaration, By-Laws and of any rules and regulations or use restrictions promulgated pursuant thereto which govern the conduct of Owners and which provide for sanctions against Owners shall also apply to all occupants, permittees, invitees, and tenants and sub-tenants of any Lot. Every Owner shall cause all occupants to comply with the Declaration, By-Laws, and the rules and regulations adopted pursuant thereto, and will be responsible for all violations and losses to the Common Areas caused by such occupants, notwithstanding the fact that such occupants of a Lot are fully liable and may be sanctioned for any violation of the Declaration, By-Laws, and rules and regulations adopted pursuant thereto.

*Section 4. Animals and Pets.* Pet stores may keep animals for sale and veterinary offices

may keep animals for veterinary treatment only inside a building and may exercise them inside a court yard screened as approved by the ARC so that the animals being exercised are not visible from any street. Otherwise, no animals of any kind will be raised, bred, or kept on any portion of the Properties.

*Section 5. Quiet Enjoyment.* No Lot shall be used for the storage of any property or thing that will cause it to appear to be in an unclean or untidy condition or that will be obnoxious to the eye; nor shall any thing be kept upon the Properties that will emit foul or obnoxious odors or that will cause any noise or other condition that will or might disturb the peace, quiet, safety, comfort, or serenity of the occupants of any Lot of the Properties or of the larger community of KINDERTON.

No noxious, illegal, or offensive activity shall be carried on upon the Properties, nor shall anything-be done thereon tending to cause embarrassment, discomfort, annoyance, or nuisance to any person using the Properties or of the larger community of KINDERTON. There shall not be maintained any plants or animals or device or thing of any sort whose activities or existence in any way is noxious, dangerous, unsightly, unpleasant, or of a nature as may diminish or destroy the enjoyment of the Properties or of the larger community of KINDERTON. No outside burning of wood, leaves, trash, garbage or refuse shall be permitted within the Properties.

*Section 6. Unsightly or Unkempt Conditions.* Each Owner will prevent from occurring any unclean, unhealthy, unsightly, or unkempt condition on the Owner's Lot.

*Section 7. Antennas.* No exterior antennas, aerials, satellite dishes larger than 18 inches, or other apparatus for the transmission of television, radio, satellite or other signals of any kind shall be allowed on any Lot, without the prior written consent of the Board. In the event an Owner of a Lot is engaged in the retail sale or leasing of such devices, the devices will be kept within a Structure on the Owner's Lot. The Declarant and/or the Association has the right to erect or install an aerial, satellite dish, master antenna, cable system, or other apparatus for the transmission of television, radio, satellite or other signals for the benefit of all or a portion of the Properties.

*Section 8. Garbage Receptacles, Tanks, Etc.* All garbage receptacles, above-ground storage tanks, mechanical equipment, and other similar items on Lots will be located or screened so as to be concealed from view of neighboring Lots, streets, and property located adjacent to the Lot. All rubbish, trash, and garbage will be stored in appropriate containers of commercial quality approved pursuant to Article XI hereof. Each Owner will regularly remove all refuse, waste, rubbish, trash, and garbage from the Owner's Lot and will not allow the same to accumulate thereon.

*Section 9. Subdivision of Lot and Use for Right-of-Way.* No Lot shall be further subdivided or its boundary lines changed except by the Declarant. Declarant may replat any Lot or Lots owned by Declarant. Declarant expressly reserves the right to use any Lot owned by Declarant for public or private right-of-way access to contiguous land.

*Section 10. Firearms.* The discharge of firearms within the Properties is prohibited. The term “firearms” includes “B-B” guns, pellet guns, and other firearms of all types, regardless of size.

*Section 11. New Construction.* Only newly constructed Structures shall be permitted upon a Lot. No structure shall be moved from another place or Lot to a Lot within the Properties. Construction of Structures and improvements upon a Lot must commence within twelve months from the date the Owner acquires title to the Lot and must proceed toward completion at a reasonable pace, due consideration given to weather and availability of construction materials.

*Section 12. Irrigation.* Only underground sprinkler or irrigation systems approved by the ARC are permitted. This Section 12 does not apply to the Declarant, and it may not be amended without Declarant's written consent so long as Declarant has the right to add property in accordance with Article VIII, Section 1.

*Section 13. Tents, Trailers, and Temporary Structures.* Except as may be permitted by the Declarant or the ARC during initial construction within the Properties, no tent, utility shed, shack, trailer or other structure of a temporary nature will be placed upon a Lot or any part of the Properties. Notwithstanding the above, party tents or similar temporary structures may be erected for special events with prior written approval of the Board, or by the Declarant.

*Section 14. Drainage Systems.* Catch basins and drainage areas are for the purpose of natural flow of water only. No obstructions or debris will be placed in these areas. No Person other than Declarant may obstruct or re-channel the drainage flows after location and installation of drainage swales, storm sewers, or storm drains. Declarant reserves for itself and the Association a perpetual easement across the Properties for the purpose of altering drainage and water flow.

*Section 15. Sight Distance at Intersections.* All Lots and property located at street intersections will be landscaped so as to permit safe sight across the street corners. No Structure, fence, wall, hedge, or shrub planting will be permitted which would create a traffic or sight problem as determined by the Board or the ARC.

*Section 16. Utility Lines.* All utility lines must be underground. No overhead utility lines, including lines for cable television, will be permitted within the Properties, except for power line easements granted prior to the recording of this Declaration, temporary lines as required during construction, and high voltage lines if required by law or for safety purposes.

*Section 17. Air Conditioning Units.* Except as may be permitted by the Board or its designee, no window air conditioning units may be installed in any Structure.

*Section 18. Lighting.* Except for reasonable seasonal decorative lights, which may be displayed between Thanksgiving and January 10 only, all exterior lights must be approved in accordance with Article XI of this Declaration.

*Section 19. Artificial Vegetation, Exterior Sculpture, and Similar Items.* No artificial vegetation will be permitted on the exterior of any portion of the Properties. Exterior sculpture, fountains, and similar items must be approved in accordance with Article XI of this Declaration.

*Section 20. Energy Conservation Equipment.* No solar energy collector panels or attendant hardware or other energy conservation equipment will be constructed or installed on any Structure unless it is an integral and harmonious part of the architectural design of a Structure, as determined in the sole discretion of the appropriate committee pursuant to Article XI hereof.

*Section 21. Building Setbacks.* No building or part of a building will extend nearer to any property line than as permitted by the building setback lines shown on the recorded Plats of the Properties, or the applicable subdivision and zoning regulations of the County of Davie, whichever is most restrictive. Modifications on a case-by-case basis may be made by the ARC; provided that the ARC shall not have authority to modify these provisions in a way that is less strict than the applicable subdivision and zoning regulations of the County of Davie.

*Section 22. On-Site Fuel Storage.* No on-site storage of gasoline, heating or other fuels will be permitted on any part of the Properties except that up to five gallons of fuel may be stored on each Lot for emergency purposes and operation of lawn mowers and similar tools or equipment, and the Association will be permitted to store fuel for operation of maintenance vehicles, generators and similar equipment.

*Section 23. Leasing of Lots.* An Owner may lease its Lot. Any such lease shall be subject to the terms and conditions of this Declaration, the By-Laws of the Association, and all rules and regulations adopted by the Board of Directors of the Association from time to time. A lessee may not exercise any voting rights of the Owner granted hereunder. The lessee may not sublease the property. Each lease must contain a provision making violation of any provision of this Declaration, or the By-Laws of the Association, or of any rules and regulations adopted by the Board of Directors of the Association, a breach by the lessee under the lease granting the Owner and the Association the right to terminate the lease and evict the lessee.

*Section 24. Laws and Ordinances.* Every Owner and occupant of any Lot, their employees, permittees and invitees, will comply with all laws, statutes, ordinances and rules of federal, state and municipal governments applicable to the Properties and any violation thereof may be considered a violation of this Declaration.

*Section 25. Architectural Standards.* No construction shall take place except in strict accordance with the provisions of Article XI hereof, the Architectural Guidelines developed pursuant thereto, and as approved by the ARC or the MC as appropriate.

*Section 26. Landscaping Requirements.* All landscaping will be established and maintained in accordance with the requirements of the Architectural Guidelines, and as approved by the ARC or the MC as appropriate.

## **Article XIII**

### **Easements**

*Section 1. Easements for Utilities, Landscaping, Etc.* There is reserved unto Declarant, so long as the Declarant owns any of the Properties, the Association, and their respective designees (which may include, without limitation, Davie County and any utility) access, construction, and maintenance easements upon, across, over, and under all of that portion of the Properties designated as an easement of any kind to the extent reasonably necessary to install, construct, maintain, repair, or replace any utility of any kind, communications systems of any kind, security systems, sidewalks, wetlands, drainage systems, street lights, streets, parking areas, and signage on property which it owns or within easements designated for such purposes on recorded Plats of the Properties. These easements do not entitle the holders to construct or install any of the foregoing systems, facilities, or utilities over, under or through any portion of the Properties which is not designated as an easement area on any of the Plats of the Properties. Damage to a Lot resulting from the exercise of these easements will promptly be repaired by, and at the expense of, the Person exercising the easement. The exercise of these easements will not unreasonably interfere with the use of any Lot and, except in an emergency, entry onto any Lot will be made only after reasonable notice to the Owner or occupant.

*Section 3. Easements to Serve Additional Property.* The Declarant, its successors, assigns, licensees, and mortgagees, shall have and hereby reserves an easement over the Common Area, and streets, for the purposes of enjoyment, use, access, and development of Additional Property owned by the Declarant, whether or not such Additional Property is made subject to this Declaration. This easement includes, but is not limited to, a right of ingress and egress over the streets of the Common Area and for connecting and installing utilities on the Additional Property. Declarant further agrees that if the easement is exercised for permanent access to the Additional Property and such Additional Property or any portion thereof is not made subject to this Declaration, the Declarant, its successors or assigns will enter into a reasonable agreement with the Association to share the cost of maintenance of any access roadway serving the Additional Property. Such agreement will provide for sharing of costs based on the ratio which the number of Lots in that portion of the Additional Property which is served by the easement and is not made subject to this Declaration bears to the total number of Lots within the Properties and in such portion of the Additional Property.

*Section 4. Cross-Easements.*

(a) Access Easements. Non-exclusive perpetual easements for ingress, egress and regress are reserved by the Declarant for itself and its successors and assigns, permittees, invitees, and licensees, for the Properties and Additional Properties owned by the Declarant, and granted to each Owner of a Lot and the Owner's successors and assigns, permittees, invitees, and licensees, and over all streets and parking access streets shown on the Plats of the Properties, whether recorded or hereafter recorded, and over all streets and parking access streets shown on the Plats of Kinderton, whether recorded or hereafter recorded.

\_\_\_\_\_ (b) Parking Easements.

(1) General Easements. Non-exclusive perpetual easements to park in any area designated as on street parking or public parking on any of the Plats of the Properties are reserved by the Declarant, its successors and assigns, and are granted to the general public, and the permittees, invitees, and licensees of each Owner of a Lot.

(2) Limited Easements. Limited non-exclusive perpetual easements to park in any area designated private parking on any of the Plats of the Properties after the normal business hours of the Owner of the Lot upon which the private parking area is located are reserved by the Declarant, its successors and assigns, and are granted to the general public, and the permittees, invitees, and licensees of each Owner of a Lot.

\_\_\_\_\_ Section 5. Easements Shown on Recorded Plats. The Properties and each Lot shall be subject to all easements shown on any Plat of the Properties whether now or hereafter recorded.

\_\_\_\_\_ Section 6. Right of Entry. The Association has the right, but not the obligation, to enter any Lot for emergency, security, and safety reasons to perform maintenance pursuant to Article IV hereof, and to inspect for the purpose of ensuring compliance with this Declaration, any Supplemental Declaration, By-Laws, and rules and regulations, which right may be exercised by the Association's Board of Directors, or officers, agents, employees, managers, and all policemen, firemen, ambulance personnel, and similar emergency personnel in the performance of their respective duties. Except in an emergency situation, entry will only be during reasonable hours and after notice to the Owner. This right of entry includes the right of the Association to enter a Lot to cure any condition which may increase the possibility of a fire or other hazard in the event an Owner fails or refuses to cure the condition within a reasonable time after requested by the Board.

**Article XIV**  
**Declarant's Rights**

This Declaration and the covenants, conditions and restrictions contained herein are intended to promote and maintain a plan of commercial development of the Properties, as that plan may change during the course of development. This Declaration, and any amendment hereto, whether made unilaterally by the Declarant or by the Association, shall become a part of this plan of commercial development and be enforceable uniformly by and against all Lots hereunder.

Any or all of the special rights and obligations of the Declarant set forth in this Declaration or the By-Laws may be transferred to other Persons, provided that the transfer shall not reduce an obligation nor enlarge a right beyond that contained herein or in the By-Laws, as applicable, and provided further, no such transfer will be effective unless it is in a written instrument signed by the

Declarant and duly recorded in the public registry for Davie County, North Carolina.

Notwithstanding any provisions contained in the Declaration to the contrary, until the expiration of the Class "B" Control Period, the Declarant is permitted to maintain and carry on upon portions of the Common Area such facilities and activities as, in the sole opinion of Declarant, may be reasonably required, convenient, or incidental to the construction or sale of such Lots, including, but not limited to, business offices, signs, model units, and sales offices, and the Declarant shall have an easement for access to and use of such facilities. The right to maintain and carry on such facilities and activities includes specifically, without limitation, the right to use Lots owned by the Declarant as models and sales offices, respectively.

So long as Declarant continues to have rights under this Article, no Person shall record any declaration of covenants, conditions and restrictions, or similar instrument affecting any portion of the Properties without Declarant's review and written consent. Any attempted recordation without compliance herewith shall result in such declaration of covenants, conditions and restrictions, or similar instrument being void and of no force and effect unless subsequently approved by recorded consent signed by the Declarant and recorded in the public registry.

This Article may not be amended without the express written consent of the Declarant; provided, however, the rights contained in this Article will terminate upon the earlier of (a) twenty years from the date this Declaration is recorded, or (b) upon recording by Declarant of a written statement that all sales activity has ceased.

## **Article XV** **General Provisions**

*Section 1. Term.* The covenants and restrictions of this Declaration shall run with and bind the Properties, and shall inure to the benefit of and shall be enforceable by the Association or the Owner of any property subject to this Declaration, their respective legal representatives, heirs, successors, and assigns, for a term of thirty years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten years, unless an instrument in writing, signed by a majority of the then Owners, has been recorded within the year preceding the beginning of each successive period of ten years, agreeing to change said covenants and restrictions, in whole or to terminate the same, in which case this Declaration shall be modified or terminates as specified therein.

*Section 2. Amendment.* Until the expiration of the Class "B" Control Period, the Declarant may amend this Declaration for any reason.

In addition, except as otherwise specifically set forth above or elsewhere in this Declaration, this Declaration may be amended only by the affirmative vote or written consent, or any combination thereof, of Voting Members representing seventy-five percent of the total Class "A" votes in the

Association and the consent of the Class "B" Member, so long as such Class "B" membership exists. Notwithstanding the above, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause. Any amendment to be effective must be recorded in the public registry of Davie County, North Carolina.

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

No amendment may remove, revoke, or modify any right or privilege of Declarant without the written consent of Declarant or the assignee of such right or privilege, or in any other way defeat the common plan of commercial development for the Properties which is set forth in this Declaration.

*Section 3. Severability.* Invalidation of any one of these covenants or restrictions by judgment or court order will in no way affect any other provisions, which shall remain in full force and effect.

*Section 4. Perpetuities.* If any of the covenants, conditions, restrictions, or other provisions of this Declaration are declared by a court to be unlawful, void, or voidable for violation of the rule against perpetuities, then such provisions shall be deemed to be reformed to vest the particular interest within 90 years of the creation of the interest in compliance with the provisions of NCGS § 41-17.

*Section 5. Litigation.* No judicial or administrative proceeding shall be commenced or prosecuted by the Association unless approved by a vote of seventy-five percent of the Voting Members. This Section shall not apply, to (a) actions brought by the Association to enforce the provisions of this Declaration (including, without limitation, the foreclosure of liens), (b) the imposition and collection of assessments as provided in Article X hereof, (c) proceedings involving challenges to ad valorem taxation, or (d) counterclaims brought by the Association in proceedings instituted against it. This Section shall not be amended unless such amendment is made by the Declarant or is approved by the percentage votes, and pursuant to the same procedures, necessary to institute proceedings as provided above.

*Section 6. Cumulative Effect; Conflict.* In the event of a conflict between the provisions of this Declaration and the provisions of North Carolina law, then to the extent that the provisions of North Carolina law cannot be waived by agreement, the North Carolina law controls.

*Section 7. Use of the Words "Kinderton".* No Person shall use the words "Kinderton" or any derivative thereof in any printed or promotional material without the prior written consent of the Declarant. However, Owners may use the terms "Kinderton" in printed or promotional matter where

such term is used solely to specify that particular property is located within Kinderton and the Association shall be entitled to use the words "Kinderton" in its name.

*Section 8. Compliance; Enforcement.* Every Owner and occupant of any Unit will comply with all lawful provisions of this Declaration, the By-Laws and rules and regulations of the Association. Failure to comply shall be grounds for an action to recover sums due, for damages or injunctive relief, or for any other remedy available at law or in equity, maintainable by the Association or, in a proper case, by any aggrieved Lot Owner or Owners. In addition, the Association may avail itself of any and all remedies provided in this Declaration or the By-Laws.

*Section 9. Notice of Sale or Transfer of Title.* In the event that any Owner desires to sell or otherwise transfer title to a Lot, such Owner will give the Board of Directors at least seven days prior written notice of the name and address of the purchaser or transferee, the date of such transfer of title, and such other information as the Board of Directors may reasonably require. Until such written notice is received by the Board of Directors, the transferor will continue to be jointly and severally responsible for all obligations of an Owner hereunder, including payment of assessments against the Lot being transferred.

*Section 10. Irrevocable Proxy.* To the extent necessary to permit the exercise of all rights and powers set forth herein, this Declaration is deemed to constitute an Agreement of all the Owners and Members of the Association. In addition, all Members constitute and appoint the President, as chairman of the Board of Directors, as their duly authorized attorney-in-fact, with full power of substitution, to provide any necessary approval of the exercise by the Declarant of the rights or powers set forth in this Declaration. This proxy may be exercised by affirmative vote on any resolution authorizing such action submitted at a duly called meeting of the Association or by the execution of a consent to action in place of a meeting. This proxy is coupled with an interest and is irrevocable.

IN WITNESS WHEREOF, the Declarant has caused this Declaration of Covenants, Conditions and Restrictions for **KINDERTON (VILLAGE CORE, PHASES 1, 2 and 3)** to be executed this \_\_\_ day of \_\_\_\_\_, 1998.

**THE HILLSDALE GROUP, LLC (SEAL)  
DECLARANT**

By: \_\_\_\_\_ (Seal)  
William A. Burnette, Manager

\_\_\_\_\_

NORTH CAROLINA  
DAVIE COUNTY

I, a Notary Public of the aforesaid County, do hereby certify that William A. Burnette, Manager of The Hillsdale Group, LLC, a North Carolina manager - managed limited liability company, personally appeared before me this day and acknowledged the execution and sealing of the foregoing instrument as Manager on behalf of and as the act of the company referred to in this acknowledgment. Witness my hand and official seal this the \_\_\_ day of \_\_\_\_\_, 1998.

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Notary Public

My commission expires: \_\_\_\_\_