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 M. BRENT SHOAF, REGISTER OF DEEDS
 DAVIE COUNTY, NC
 BY *M. Brent Shoaf*
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**DECLARATION OF CONDOMINIUM
 OF
 MILLING WAY GARDEN VILLAS CONDOMINIUMS**

BRC Development Company, Inc., a North Carolina Corporation (hereinafter referred to as "Declarant") does hereby make, declare and establish on this 2nd day of April, 2003, this Declaration of Condominium as and for the plat of ownership of Milling Way Garden Villas Condominiums, being the property and improvements hereinafter described.

1. Establishment of Condominium

Declarant is the owner of the fee simple title to that certain real property situated in Davie County, North Carolina, and which property is more particularly described in Exhibit "A" attached hereto and incorporated herein by reference, and on which property there is planned construction of sixteen (16) residential buildings with each comprised of four (4) units and a swimming pool. This Declaration does not apply to proposed storage facilities and a 1.024 acre lot designated as "Reserved Lot" fronting on Oak Street. Declarant does hereby submit the above-described property and planned improvements to condominium ownership under the provisions of Chapter 47C of the General Statutes of North Carolina (North Carolina Condominium Act) and hereby declares the same to be a condominium to be known as MILLING WAY GARDEN VILLAS CONDOMINIUMS (hereinafter called "Condominium").

2. Survey and Description of Improvements

Filed simultaneously herewith and expressly made a part hereof is a plat in ^{File} ~~Plat Book~~ 2, Page 1, Davie County Registry, showing the graphic descriptions and plans of the improvements constituting the Condominium identifying the Condominium Units, Common Areas and Facilities and the Limited Common Areas, as said terms are hereinafter defined, and their respective locations and approximate dimensions. Each condominium Unit is identified by specific designation in said Unit Ownership File, and no Condominium Unit bears the same

description as any other Condominium Unit.

3. **Definitions**

The Condominium consists of Condominium Units, Common Areas and Facilities and Limited Common Areas, as said terms are hereinafter defined.

- A. "Annual Financial and Report of the Association" shall mean the annual audited financial statement of the Association, prepared by an independent certified public accountant within 120 days of fiscal year-end.
- B. "Association of Unit Owners" shall mean all of the Unit Owners acting as a group in accordance with the By-Laws and Declaration. There shall be a Master Association for the entire condominium project and a separate association for each phase.
- C. "Building(s)" shall mean all improvements, now or hereinafter erected on the Property, which contain one (1) or more Units.
- D. "Common Property" shall include the Common Areas.
- E. "Common Profits" shall mean the balance of all income, rents, profits and revenues from the Common Areas and Facilities remaining after the deductions of the common expenses.
- F. "Condominium" means the ownership of single units in a multi-unit structures with Common Areas and Facilities.
- G. "Common Areas and Facilities" unless otherwise provided in this Declaration or lawful amendments thereto, means and includes:
- (1) The land on which the Building stands and such other land and improvements thereon as may be specifically included in this Declaration, except any portion thereof included in a unit or as may be included in the Limited Common Area;
 - (2) The foundations, columns, girders, beams, supports, main walls, roofs, halls, stairs, stairways, fire escapes, and entrances and exits of each Building;
 - (3) The yards and parking areas;
 - (4) Installations of central services such as power, light, gas, hot and cold water, heating, refrigeration, air conditioning and incinerating;
 - (5) the tanks, pumps, motors, fans, compressors, ducts, and in general, all apparatus and installations existing for common use;

- (6) Such community and commercial facilities as may be provided for in this Declaration; and
 - (7) All other areas and facilities shown as Common Areas and Facilities on the recorded plat.
- H. "Common Expenses", unless otherwise provided in this Declaration or lawful amendments thereto, means and includes:
- (1) All sums lawfully assessed against the Unit Owners by the Association of Unit Owners;
 - (2) Expenses of administration, maintenance, repair or replacement of the Common Areas and Facilities;
 - (3) Expenses agreed upon as master common expenses by the Association of Unit Owners;
 - (4) Tax Assessments against any or all of the Common Area;
 - (5) Premiums for hazard and liability insurance (except as such liability insurance is for the exclusive benefit of the Unit Owners) for the condominium project and fidelity bond coverage on the officers of the Homeowners Association;
- I. "Limited Common Areas and Facilities" shall mean and include those Common Areas and Facilities which are agreed upon by all the Unit Owners to be reserved for the use of an individual unit or units to the exclusion of the other units, such as the vestibules common to certain specific units.
- J. "Majority" or "Majority of Unit Owners" shall mean the Owners of fifty-one percent (51%) of more of the aggregate interest in the Common Areas and Facilities as established by this Declaration assembled at a duly called meeting of the Unit Owners.
- K. "Person" shall mean individual, corporation, partnership, limited liability company, association, trustee or other legal entity.
- L. "Property" shall mean and includes the land, the building, all improvements and structures thereon and all easements, rights and appurtenances belonging thereto, and all articles of personal property intended for use in connection therewith, which have been or are intended to be submitted to the provisions of this Declaration.
- M. "Unit" or "Condominium Unit" shall mean an enclosed space consisting of one or more floors and shall include such accessory spaces and areas as may be described in this Declaration. Each unit is bounded by the walls, floors, and ceilings of each individual unit as designated on the plat or plats hereinafter referred to, and all lath, furring,

wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, finished flooring and any other materials constituting any part of the finished flooring, and any other materials constituting any part of the finished surfaces thereof are a part of the unit; and all other portions of such walls, floors or ceilings are a part of the Common Property set forth in Paragraph C above. If any chute, flue, duct, wire, conduit, bearing wall, bearing column or any other fixture lies partially within and partially outside the designated boundaries of a unit, any portion thereof serving that unit is a Master Limited Common Area, allocated exclusively to that area, and any portion thereof serving more than one (1) unit or any portion of the Common Property is a part of the Common Property. Notwithstanding anything to the contrary, no enclosed space shall be deemed a Unit unless and until it receives a certificate of occupancy from the local municipal agency which issues such certificates.

- N. "Unit Designation" shall mean the number designating the unit in this Declaration.
- O. "Unit Owner" shall mean one (1) or more Persons who own a Unit.

4. Nature and Incidents of Unit Ownership

Unit ownership as created and defined in this Declaration shall vest in the holder exclusive ownership and possession with all the incidents of real property. A condominium Unit in the building may be individually conveyed, leased and encumbered and may be inherited or devised by will, as if it were solely and entirely independent of the other Units in the Building of which it forms a part. Such a unit may be held and owned by more than one person either as tenants in common or tenants by the entirety or in any other manner recognized under the laws of this State.

5. Undivided Interests in Common Areas and Facilities

- A. Each Unit Owner shall be entitled to an undivided interest in the Common Areas and Facilities in the ratio expressed in this Declaration. Such ratio shall be in the approximate relation that the habitable square footage of the unit bears to the then aggregate habitable square footage of all the units having an interest in said Common Areas and Facilities.
- B. The ratio of the undivided interest of such Unit Owner in the Common Areas and Facilities as expressed in this Declaration shall have a permanent character and shall not be altered except with the unanimous consent (which consent is absolutely granted as stated in paragraphs below) of all Unit Owners expressed in an amended declaration duly recorded.
- C. The Declarant presently owns the Property solely and entirely in fee simple and Declarant gives, grants, dedicates and covenants its consent to any and all amendments to this Declaration that may be necessary to bring about any and all future sections and future Condominiums Units or mergers that may be necessary or desirable to accomplish the fully completed development of Milling Way Garden Villas as 64 units through phases.

By this Declaration, the Declarant submits only the land described in Exhibit A, together with the improvements known as Phase 1 of Milling Way Garden Villas. The legal description of the property subject to Declarant's annexation right is set forth on Exhibit A-1. Notwithstanding the content of Section 1 herein, the Declarant reserves the right to modify the number of buildings constructed and the number of units per building subject to the approval of appropriate governing body.

The right to expand the development is a Special Declarant Right as defined by the North Carolina Condominium Act. Such expansion shall occur, if at all, by the recordation of one or more amendments to this Declaration, which amendments shall be executed by the Declarant or its successors and assigns. The recordation of any such amendment, and expansion of the development subject to this Declaration effectuated thereby, shall not require consent or ratification of any unit owner or the holder of any deed of trust or other security instrument against the Property subject to this Declaration. The development rights reserved herein for future phases or Condominium Units may be exercised separately and at different times, but in no event later than seven (7) years from the date of recordation of this Declaration. The Declarant makes no assurances as to the order in which future phases may be subjected to the exercise of each development right and the boundaries of such phases, except as required by governmental regulations. If the Declarant adds all of the proposed Condominium Units, the Declarant covenants and agrees that no more than 64 units will be added to the Property subject to this Declaration. The rights granted in this Section 5C to the Declarant shall inure to the benefit of any qualified purchaser.

If any units are added to and made subject to this Declaration by the expansion contemplated by this section, then, the undivided interest in the Common Areas and Facilities, the liability for Common Expenses not specifically assessed, the interest in any common surplus, and the voting rights in the Association will thereafter be that proportion that the habitable square footage of each such Condominium Unit bears to the then aggregate habitable square footage of all units constituting a portion of Property at the date of the amended or supplemental declaration or declarations, as determined by Declarant. All future improvements will be constructed in a manner consistent with initial improvements in structural type and quality of construction. Nothing herein shall be deemed to limit or alter Declarant's right, hereby reserved, to vary the internal layout or exterior configurations of any condominium units hereafter constructed so long as Declarant substantially conforms with the provisions of this paragraph. Due to the construction of additional Condominium Units up to said total amount of 64 units, the percentage of interest of any Unit Owner in the Common Area will decrease as the number of unit owners entitled to use available Common Areas increase through annexations and development. No additional Condominium Unit shall be annexed until after such time as it is substantially completed.

To that end, all present and future Unit Owners and successors in title, and their mortgagees, grant the absolute and irrevocable right to Declarant to amend the Declaration in order to properly reflect the correct percentage of interest of any Unit

Owner in the Common Areas as future phases and Condominium units are added.

The Declarant is deemed to have the absolute and irrevocable consent of all Unit Owners or future Unit Owners to amend the Declaration for the purpose of adjusting the Unit Owners' percentages of interest in Common Areas without any further acknowledgment or consent from a Unit Owner or successor in title of any Unit Owner or mortgagee to make such amended Declaration or Declarations.

Declarant intends to forever and irrevocably bind itself, its purchasers, successors and assigns and specifically its successors in title to the property or any part thereof to the end that:

- (1) Its consent shall be an appurtenance to the property and title thereto and to such units that shall appear thereon;
- (2) The laws of the State of North Carolina, more particularly Chapter 47C of the General Statutes of North Carolina shall apply;
- (3) Unanimous consent of all Unit Owners to amendment of the Declaration for the purposes stated shall be assured.

The intent of this section is to provide for the orderly phased development of Milling Way Garden Villas Condominiums according to plan, which shall be approved by the local municipal or governmental body. If for any reason successors in title to the property or any part thereof shall challenge or otherwise object to an amendment to the Declaration as and for reasons contemplated herein being unanimously consented to as herein sought to be accomplished, then they and each of them, by assuming title, covenant and agree to and do give their consent to such amendment even if that requires or effects a change on the face of or amendment to that portion of their deed which relates to an undivided interest in Common Area.

This paragraph shall serve as notice to any person or entity acquiring an undivided interest in the Common Area, or a security interest therein, that the ration for the undivided interest in the Common Area that he acquires the title to may (will likely) change and decrease from time to time as additional Condominium Units or mergers take place as herein permitted, by unanimous consent to amendment to the Declaration, for the purposes set out herein, being given, granted, dedicated and covenanted until ultimately, and permanently, the ration of undivided interest of all Unit Owners in the Common Area will be based on a ratio which shall be in the approximate relation that the habitable square footage of each respective unit bears to the aggregate square footage of all units having an interest in the Common Area.

The undivided interests appurtenant to each unit in Phase I of Milling Way Garden Villas Condominiums shall be as set out in Exhibit "B" attached hereto, incorporated herein by reference, and made a part hereof. In the event the development rights herein reserved to

the Declarant are fully exercised, Exhibit B sets forth the minimum undivided interest appurtenant to each unit in Phase I. The undivided interest in the Common Area that is appurtenant to each unit has been determined by the ration of the approximate habitable square footage of each unit to the aggregate approximate habitable square footage of all of the units having an undivided interest in the Common Area at the date of this Declaration (or of any supplements or amendments hereto which affect undivided interests in Common Area); the term "unit" as used in this sentence is limited to refer only to dwellings (existing or planned) at or upon the Property.

- D. Declarant shall have a reasonable construction easement across the Common Area for the purpose of constructing improvements on the Units. Declarant shall have such easements through the Common Area as may be necessary for the purpose of discharging Declarant's obligations or exercising Special Declarant Rights, as provided herein.

6. **Restrictions Against Further Subdivision of Condominium Units; Separate Conveyance of Appurtenant Common Property Prohibited**

No Condominium Unit may be divided or subdivided into a smaller Unit or Units than as shown in the Unit Ownership File nor shall any Condominium Unit or portion thereof be added to or incorporated into any other Condominium Unit. The undivided interest in the Common Property declared to be an appurtenance to each Condominium Unit shall not be conveyed, devised, encumbered or otherwise dealt with separately from said Condominium Unit, and the undivided interest in Common Property appurtenant to each Condominium Unit shall be deemed conveyed devised, encumbered or otherwise included with the Condominium Unit even though such undivided interest with the Condominium Unit is not expressly mentioned or described in the instrument conveying, devising, encumbering or otherwise dealing with such Condominium Unit. Any conveyance, mortgage or other instrument which purports to grant any right, interest or lien in, to or upon a Condominium Unit shall be null and void insofar as it purports to affect any interest in a Condominium Unit and its appurtenant undivided interest in Common Property unless it purports to convey, devise or encumber the entire Condominium Unit, which described said Condominium Unit by the number designation thereto in the Unit Ownership File shall be construed to affect the entire Condominium Unit and its appurtenant undivided Common Property. No limitation is placed on the ownership of any Condominium Unit by any person as tenants in common, joint tenants, tenants by the entirety, or by any other legal entity. Except in cases of condemnation, portions of the Common Elements may not be conveyed or encumbered without the affirmative vote of at least eighty percent (80%) of the Unit Owners. A sale or encumbrance shall be subject to the superior priority of any prior mortgage on the Unit unless the mortgagee releases its interest therein.

7. **Condominium Subject to Restrictions**

The Condominium Units, Common Areas and Facilities and Limited Common Areas and Facilities, are hereby declared to be subject to the restrictions, easements, conditions and covenants prescribed and established herein governing the use of said Condominium Units, Common Areas and Facilities and Limited Common Areas and setting forth the obligations and

responsibilities incident to ownership of each Condominium Unit and its appurtenant undivided interest in the Common Property, and said condominium Units, Common Areas and Facilities and Limited Common Areas and Facilities are further declared to be subject to the restrictions, easements, conditions and limitations now of record affecting the land and improvements of the Condominiums.

8. Perpetual Non-Exclusive Easement in Common Property

The Common Areas and Facilities is hereby declared to be subject to a perpetual non-exclusive easement in favor of all Owners of Condominium Units for their use and the use of their guest and invitees, for all proper purposes and for the furnishing of services and facilities for which they are intended and for the enjoyment of the Owners. The Limited Common Area are hereby declared to be subject to a perpetual non-exclusive easement in favor of all Unit Owners for their use and the use of their guests and invitees, for all proper purposes and for the furnishing of services and facilities for which they are intended and for the enjoyment of the Unit Owners. Both the Common Area and Limited Common Area are also declared to be subjected to a perpetual non-exclusive easement in favor of Milling Way Garden Villas Condominiums Homeowners Association for the purpose of repairs, maintenance and such other reasonably necessary purposes as determined by the Milling Way Garden Villas Condominiums Homeowners Association. Notwithstanding the foregoing, the Association hereinafter defined shall have the exclusive right to establish the rules and regulations pursuant to which the Owner of any Condominium Unit, his family, guest and invitees, may be entitled to use the Common Property, including the right to assign parking spaces, and to establish the regulations concerning their use. The Owners of Condominium Units shall be responsible for all acts of their guests, invitees or lessees in connection with the provisions of this Declaration.

9. Easement for Unintentional and Non-Negligent Encroachments

In the event that any Condominium Unit or any of its appurtenant improvements shall encroach upon any Common Property, or any other Condominium Unit Owners, then an easement appurtenant to such Condominium Unit shall exist for the continuance of such encroachment upon the Common Property or upon a Condominium Unit for so long as such encroachment shall naturally exist; and, in the event that any portion of the Common Property shall encroach upon any Condominium Unit, then an easement shall exist for the continuance of such encroachment of the Common Property upon any Condominium Unit for so long as such encroachment shall naturally exist. If any Condominium Unit or Common Property shall be partially or totally destroyed as a result of fire or other casualty, or as a result of condemnation or eminent domain proceedings and, if upon reconstruction of such Unit and/or Common Property in accordance with Paragraph 23 hereof, there exist encroachments of portions of the Common Property upon any Condominium Unit, or of any Condominium Unit upon any other Condominium Unit or upon any portion of the Common Property, then such encroachments shall be permitted and a valid easement for the maintenance thereof shall exist so long as such encroachments shall naturally remain.

10. Restraint Upon Separation and Partition of Common Property

Recognizing that the proper use of a Condominium Unit by an Owner or Owners is dependent upon the use and enjoyment of the Common Property in common with the Owners of all other Condominium Units and that it is in the interest of all Owners that the Ownership of the Common Property be retained in common by the Owners, it is hereby declared that the proportional undivided interest in the Common Property appurtenant to each Condominium Unit shall remain undivided and no Unit Owner shall bring or have any right to bring any action for partition or division, unless and until the Condominiums are terminated in accordance with North Carolina law.

11. Administration of Condominium by Owners Association

To efficiently and effectively provide for the administration of the Condominiums by the Owners of the Condominium Units, a non-profit North Carolina corporation known and designated as MILLING WAY GARDEN VILLAS HOMEOWNERS ASSOCIATION, INC. (hereinafter called "Association") has been organized and said corporation shall administer the operation and management of the Condominium and undertake and perform all acts and duties incident thereto in accordance with the terms of its Articles of Incorporation and By-Laws. The Owner or Owners of each Condominium Unit shall automatically become members of the Association upon acquiring an ownership interest in title to any Condominium Unit and its appurtenant undivided interest in Common Property; such membership shall terminate automatically upon the Owner or Owners being divested of such ownership interest in the title to such Condominium Unit, regardless of how such ownership may be divested. No person, firm or corporation holding any lien, mortgage, or other encumbrance upon any Condominium Unit shall be entitled by virtue of such lien, mortgage, or other encumbrance, to membership in the Association or to any of the rights or privileges of such ownership. In the administration of the operation and management of the Condominium, the Association is hereby granted the authority and power to enforce the provisions of this Declaration; to levy and to collect assessments in the manner hereinafter provided; and to adopt, promulgate and enforce such rules and regulations governing the use of the Condominium Units and Common Property, as the Board of Directors may deem to be in its best interest.

12. Use Restrictions

The following use restrictions shall be placed upon the Property:

- a. Each Unit is hereby restricted to residential use. Any lease agreement must provide that it shall be subject to the provisions of this Declaration, and that shall be in writing and any failure by the Lessee to comply with the terms hereof shall be a default under the Lease.
- b. No outside Pets shall be allowed. Inside pets must be taken out on leash and not tied outside. Owners shall clean up after their pets and not allow any action including, but not limited to excessive barking by the pet, to become a nuisance to other owners. Usual domestic household pets such as cats and dogs shall be allowed. Provided, however, no more than one dog or one cat shall be allowed. No

livestock, poultry, wild, dangerous, or poisonous animals may be kept as pets. No animals shall be kept or bred for commercial purposes.

- c. No outbuildings, pools, clotheslines, outside antenna or satellite dishes, or play equipment shall be allowed. No signage shall be displayed to public view except a for one for sale sign which be no larger than two feet by three feet located in a window. Any other signs must be approved by the Association. The Declarants shall have the right to allow other signage during the initial construction and development of Milling Way and any future phases.
- d. Each Unit shall have designated parking spaces and shall have no more than two motor vehicles parked on the property on a permanent basis. Recreational vehicles, including but not limited to boats and all terrain vehicles, and utility trailers shall not be parked on the property. Unlicensed or oversized vehicles shall not be parked on the property. Additional parking shall be available for temporary visitors.
- e. No leaves, trash, garbage or other similar debris shall be burned on the property. No garbage, trash, construction debris, or other unsightly or offensive materials shall be placed upon any portion of the Property, except as is temporary and incidental to bona fide improvements to the property or a lot.
- f. All window treatments shall appear uniform from the exterior of each unit.
- g. No owner or their agents shall allow any activity to occur on their lot or the property which is a nuisance to other owners. The activities shall include, but are not limited to loud music or any loud noise, unsupervised children, unruly guests, or barking dog or any other noisy pets.

13. Board of Directors of Owners Association

The Association will be governed by a Board of Directors. The Board of Directors shall be elected as provided in the By-Laws. Notwithstanding the foregoing, the Declarant has the right to designate and select a majority of the Board of Directors of the Association until no later than the later of the following events:

- a. 180 days after 90% of the units, including units comprising latter phases of development have been conveyed to purchasers;
- b. two years after the Declarant has ceased to offer units for sale in the ordinary course of business, or
- c. 5 years following the conveyance of the first unit.

Subject to the Declarant's control of the Board of Directors, members of the Association are entitled to vote in accordance with such member's percentage of undivided interest in

common elements.

14. Use of Common Property Subject to Rules of Association

The use of all Common Property by the Owner or Owners of all Condominium Units, and all other parties authorized to use the same, shall be subject to such rules and regulations as may be prescribed and established by the Association, which may be enforced by monetary fines in such amounts as the Association, in its sole discretion, decides. However, the Association with respect to the Limited Common Area, shall only establish rules and regulations in the absence of reasonable rules and regulations established by the class of Units owning an undivided interest in either of such Limited Common Area.

15. Condominium to be Used for Lawful Purposes; Restrictions Against Nuisances

No immoral, improper, offensive or unlawful use shall be made of any Condominium Unit or of the Common Property, and all laws, zoning ordinances and regulations of all governmental authorities having jurisdiction of the Condominium shall be observed. No Owner of any Condominium Unit shall permit anything to be done or kept in his Condominium Unit, or on the Common Property, which will increase the rate of insurance on the Condominium, or which will interfere with the rights of other occupants of the Condominium, or annoy them by unreasonable noises, nor shall any Owner undertake any use which shall constitute a nuisance to any other Owner of a Condominium Unit, or which interferes with the peaceful possession and proper use of any other Condominium Unit or the Common Property.

16. Right of Entry into Condominium Units in Emergencies and for Maintenance of Common Property

In case of any emergency originating in or threatening any Condominium Unit or the Common Property, regardless of whether the owner is present at the time of such emergency, the Board of Directors of the Association or any other person authorized by it shall have the right to enter such Condominium Unit for the purpose of remedying or abating the cause of such emergency, and such right of entry shall be immediate.

Whenever it may be necessary to enter any Condominium Unit in order to perform any on-emergency maintenance, alteration or repair to any portion of the Common Property, the Owner of each Condominium Unit shall permit representatives or agents of the Association to enter such Condominium Unit for such purposes, provided that the entry shall be made only at reasonable times and with reasonable advance notice.

17. Limitation Upon Right of Owners to Alter and Modify Condominium Units; No Right to Alter Common Property

No Owner of a Condominium Unit shall permit any structural modifications or alterations to be made to such Condominium Unit without first obtaining the written consent of the Association which consent may be withheld in the event that a majority of the Board of Directors

of the Association shall determine that such structural modifications or alterations would adversely affect or in any manner endanger the Condominium in part or in its entirety. No Owner shall cause any improvements or changes to be made on the exterior of the Condominium (including any improvements or changes which exist at the time of the filing of the Declaration of Condominium, and also including painting or other decoration, or the installation of electrical wiring, television or radio antennae, including dish antennae, chimneys, solar devices or solar collection devices, or any other objects or machines which may protrude through the walls, windows or foot of the Condominium, or in any manner alter the appearance of the exterior portion of any building) without the written consent of the Association being first obtained. No Unit Owner shall install any wood or coal burning stove.

18. Right of Association to Alter and Improve Common Property and Collect Assessments Therefore

The Association shall have the right to make such alterations or improvements to the Common Property which do not prejudice the rights of the Owner of any Condominium Unit in the use and enjoyment of his Condominium Unit, providing the making of such alterations or improvements are approved by the Board of Directors of the Association, and their costs shall be Common Expenses to be assessed and collected from all of the Owners of Condominium Units. However, where any alterations or improvements are exclusively or substantially for the benefit of the Owner or Owners of the Condominium Unit or Units requesting them, or either a class of Unit Owners, then the cost of such alterations or improvements shall be assessed against and collected solely from the Owner or Owners of the Condominium Unit or Units, or such class of owners, exclusively or substantially benefited and the assessment shall be levied in such proportion as may be determined by the Board of Directors of the Association.

19. Maintenance and Repair by Owners of Condominium Units

Every Owner shall promptly perform all maintenance and repair work in and out of his Condominium Unit, which, if omitted, would affect the Condominiums either in their entirety or in any part belonging to other Owners, every Owner being expressly responsible for the damages and liability which his failure to do so may endanger. The Owner of each Condominium shall be liable and responsible for the maintenance, repair and replacement of heating and air-conditioning equipment (if any), stoves, refrigerators, fans or other appliances or equipment, including any fixtures and/or their connections required to provide water, light, power, telephone, gas, cable television, sewage and sanitary service to his Condominium Unit. Such Owner shall further be responsible and liable for the maintenance, repair and replacement of the interior surfaces of all walls, ceilings and floors within his Unit including painting, decorating and furnishings and all other accessories which such Owner may desire to plan or maintain in his Condominium Unit. Owners shall be responsible for maintenance of any improvements in the Limited common Areas adjacent to their Condominium Unit, to include but not be limited to decks, patios, porches, and fences. The Board of Directors shall set maintenance standards, and in the event any individual Owner fails to properly maintain the improvements in accordance with such standards, the Board of Directors shall give the Owner written notice of its maintenance requirements and thirty (30) days to meet these requirements. Upon an Owner's

failure to meet these requirements within the time allowed, the Board of Directors shall cause the maintenance to be done and shall add such costs to the Owner's next monthly assessment after such maintenance is completed. The Association shall have all rights to collect these sums in accordance with Paragraph 25 of this Declaration. Whenever the maintenance, repair and replacement of any item which the Owner is obligated to maintain, replace or repair at his own expense is occasioned by any loss or damage which may be covered by any insurance maintained in force by the Association, the proceeds of the insurance received shall be used for the purpose of making such maintenance, repair or replacement except that the Owner of such condominium Unit shall, in said instance, be required to pay such portion of the costs of such maintenance, repair and replacement as shall, by reason of the applicability of any deductibility provision of such insurance, exceed the amount of the insurance proceeds applicable to such maintenance, repair or replacement. All doors, window frames, panes and screens are a part of the respective Condominium Units and shall be maintained by the respective Unit Owners, save and except exterior painting.

20. Maintenance and Repair of Common Property By the Association

The Association, at its expense, shall be responsible for the maintenance, repair and replacement of all of the Common Property, including those portions thereof which contribute to the support of the buildings and conduits, ducts, plumbing, gas, water lines outside the dedicated street right of way, wiring and other facilities located in the Common Property for the furnishing of utilities and other services to the Condominium Units and said Common Property, and should any incidental damage be caused to any Condominium Unit by virtue of any work which may be done by the Association in the maintenance, repair or replacement of any Common Property, the Association shall, at its expense, repair such incidental damage. Whenever the maintenance, repair and replacement of any item for which the Association is obligated to maintain, replace or repair at its expense if occasioned by any act of a Condominium Unit Owner, his immediate family, guests or invitees, and such loss or damage may be covered by any insurance maintained in force by the Association, then and in that event the proceeds from such insurance shall be used for the purpose of making such maintenance, repair or replacement, except that the Unit Owner who is responsible for the act causing the damage (whether done by himself or by his family, guests or invitees) shall be required to pay such portion of the costs as shall, by reason of the applicability of any deductibility provision of such insurance, exceed the amount of the insurance proceeds applicable to such maintenance, repair or replacement.

21. Insurance and Authority to Purchase Insurance

Insurance policies upon common areas and limited common areas of the Property (other than title insurance) shall be purchased by the Association in the name of the Board of Directors of the Association as Trustees for the Condominium Unit Owners and their respective mortgagees as their interests may appear, and shall provide for the issuance of certificates or mortgage endorsements to the holders of first mortgages on the Condominium Units or any of them, and if the companies writing such policies will agree, the policies shall provide that the insurer waives his rights of subrogation as to any claims against Condominium Unit Owners, the Association and their respective servants, agents, and guests. In addition, each Condominium

Unit Owner shall obtain insurance, at his own expense, affording coverage upon his Condominium Unit, his personal property including any built-in appliances not covered under the master policy maintained by the Association, and for his personal liability and as may be permitted or required by law, but all such insurance shall contain the same waiver of subrogation referred to above if available. The Board of Directors may, at the request of any Unit Owners, purchase additional coverage with respect to the Limited Common.

22. Insurance Coverage to be Maintained; Use and Distribution of Insurance Proceeds

- A. The following insurance coverage shall be maintained in full force and effect by the Association covering the operation and management of the Condominium Units and Common Property, including but not limited to the swimming pool and any other recreational areas;
- (1) Casualty Insurance, issued by a company having a Best Rating of "A+" and covering the buildings and all improvements upon the land and all personal property described in Exhibit "A" except such personal property as may be owned by the Condominium Unit Owners, shall be procured in an amount equal to the maximum insurance replacement value thereof (exclusive of excavation, foundations, streets and parking facilities), to be adjusted annually in accordance with increased construction costs in the local area. Such coverage shall afford protection against:
 - (a) The loss or damage by fire and other hazards covered by the standard extended coverage endorsement;
 - (b) Such other risks as from time to time customarily shall be covered with respect to buildings similar in construction, location and use, including vandalism and malicious mischief.

For the purpose of clarity, underground utilities and any system of utilities owned by owners will not be covered by insurance.

- (2) Public liability and property damage insurance in such amounts and of such forms as shall be required by the Association, including legal liability, hired automobile, non-owned automobile and off-premise employee coverage if appropriate. Said liability insurance must cover bodily injury and the property damage that results from the operation, maintenance, or use of the Common Property; and any legal liability that results from lawsuits related to employment contracts in which the Homeowners Association is a party. Said liability insurance shall provide coverage of at least \$1,000,000 for bodily injury or property damage for any single occurrence, or the minimum limits set for condominium projects by the Federal National Mortgage Association, whichever is less.
- (3) All liability insurance shall contain cross-liability endorsements to cover liabilities

of the Condominium Unit Owners as a group to a Condominium Unit Owner.

- (4) Blanket fidelity bond insurance coverage for anyone who either handles or is responsible for funds held or administered by the Association whether or not he or she receives compensation for services. These bonds should name the Association as the obligee and the premiums are paid as a Common Expense by the Association.
- B. In addition to the premiums for the bonds, premiums upon all other insurance policies purchased by the Association shall be paid by the Association as Common Expenses to be assessed and collected from all of the Owners of Condominium Units with the exception of such premiums on policies, riders or endorsements that are exclusively or substantially for the benefit of the class of Unit Owners.
- C. All insurance policies purchased by the Association shall be for the benefit of the Association and the Condominium Unit Owners and their mortgagees, as their respective interests in such Common Areas and Facilities may appear, and shall provide that all proceeds received thereon shall be held in trust for the benefit of the Association, the Condominium Unit Owners and their respective mortgages in the following shares:
 - (1) Proceeds on account of damage to Common Property: In undivided shares for each Condominium Unit Owner and his mortgagee, if any, which shares are shown on Exhibit "B" or as subsequently adjusted.
 - (2) Proceeds on account of damages to Condominium Units shall be held in the following undivided shares:
 - (a) Partial destruction when the Condominium is to be restored for the Owners of damaged Condominium Units in proportion to the costs of repairing the damage suffered by each damaged Condominium Unit;
 - (b) Total destruction of the Condominium or where the Condominium is not to be restored for all Condominium Unit Owners and their mortgagees, the share of each being set forth in Exhibit "B" or as subsequently adjusted.
- D. In the event a mortgagee endorsement has been issued as to a Condominium Unit, the share of the Condominium Unit Owner shall be held for the mortgagee and the Condominium Unit Owner as their interests may appear, but no mortgagee shall have the right to participate in the determination of reconstruction or repair.
- E. Proceeds of insurance policies received by the Association shall be distributed to or for the benefit of the Condominium Unit Owners in the following manner:
 - (1) If the damage for which the proceeds were paid is to be repaired or reconstructed, the proceeds shall be paid to defray the costs of repair or reconstruction. Any

proceeds remaining after defraying such costs shall be distributed to the beneficial Condominium Unit Owners, all remittances to Condominium Unit Owners and their mortgagees being payable jointly to them. This is a covenant for the benefit of any mortgagee of a Condominium Unit and may be enforced by him.

- (2) If it is determined the damage for which the proceeds are paid shall not be reconstructed or repaired, the proceeds shall be distributed to the beneficial Condominium Unit Owners, remittance to the Condominium Unit Owners and their mortgagees being payable jointly to them. This is a covenant for the benefit of any mortgagee of a Condominium Unit and may be enforced by him.

23. Reconstruction or Repair of Casualty Damage; Damage to Common Property; Damage to Condominium Units

- A. If any part of the Common Property shall be damaged by casualty, the determination of whether or not to reconstruct or repair it shall be made as follows:
- (1) Partial destruction shall be destruction which renders two-thirds (2/3) or less of the Condominium Units untenable. In the event of partial destruction, the Common Property shall be reconstructed or repaired unless this Declaration is terminated by a vote of a Majority of Unit Owners.
 - (2) Total destruction shall be destruction which renders more than two-thirds (2/3) of the Condominium Units untenable. In the event of total destruction, the Common Property shall not be reconstructed or repaired unless at a meeting, which shall be called within thirty (30) days after such adjustment, a Majority of Unit Owners vote for reconstruction or repair.
 - (3) Any such reconstruction or repair shall be substantially in accordance with the plans and specifications of the original construction.
- B. If the damage is only to those parts of one or more Condominium Units for which the responsibility for the maintenance and repair is that of the Unit Owner, then the Condominium Unit Owner shall be responsible for reconstruction and repair after the casualty. In all other instances, the responsibility or reconstruction and repair after casualty shall be that of the Association as follows:
- (1) Immediately after the casualty causing damage to property for which the Association has the responsibility for maintenance and repair, the Association shall obtain reliable and detailed estimates of the cost to place the damaged property in condition as good as that before the casualty. Such costs may include professional fees and premiums for such bonds as the Board of Directors deems appropriate.
 - (2) When the damage is to both Common Property and Condominium Units, the

insurance proceeds shall be applied first to the costs of repairing the Common Property and the balance of the Condominium Units.

- C. Each Condominium Unit Owner delegates to the Board of Directors of the Association his right to adjust with insurance companies all losses under policies purchased by the Association, except in any case where the damage is restricted to one Condominium Unit.

24. Association to Maintain Register of Owners and Mortgagees

The Association shall maintain a Register setting forth the names of the Owners of all Condominium Units. In the event of the transfer (whether by deed, devise or inheritance) of any Condominium Unit to a third party, the transferee shall notify the Association in writing, of his interest in such Condominium Unit, together with the recording information necessary to identify the instrument by which the transferee has acquired his interest. The Owner of each Condominium Unit shall also notify the Association of the parties holding any mortgage or lien (except for ad valorem tax or special assessments) on any Condominium Unit, the amount of such mortgage and recording information necessary to identify the mortgage. The holder of any mortgage upon any Condominium Unit may notify the Association of the existence of any mortgage and the Association shall register in its records all pertinent information relating thereto.

25. Assessments; Liability, Lien and Enforcement

The Association is given the authority to administer the operation and management of the condominium as being in the best interest of the Owners of all Condominium Units. To properly administer the operation and management of the Condominium, the Association will incur for the mutual benefit of all of the Owners of Condominium Units, costs and expenses (here "Common Expenses"). To provide the funds necessary for such property operation, management and capital improvements, the Association has been granted the right to make, levy, and collect assessments against the Unit Owners and the Condominium Units. In furtherance thereof, the following provisions shall be operative and binding upon the Owners of all Condominium Units.

- A. All assessments levied against the Unit Owners and their Condominium Units shall be uniform and, unless specifically otherwise provided for herein, all assessments made by the Association shall be in such an amount that any assessments levied against a Unit Owner and his Condominium Unit shall bear the same ratio to the total assessment made against all Unit Owners and the Condominium Units as the undivided interest in Common Areas and Facilities appurtenant to each Condominium Unit bears to the total undivided interest in the Common Areas and Facilities appurtenant to all Condominium Units. Should the Association be the Owner of a Condominium Unit or Units, the assessment which would otherwise be due and payable to the Association by the Owner of such Unit or Units, reduced by the amount of income which may be derived from the leasing of such Unit or Units by the Association, shall be apportioned and assessment therefor levied ratable among the Owners of all Units which are not owned by the

Association, based upon their proportionate interests in Common Areas and Facilities exclusive of the interests therein appurtenant to any Unit or Units by the Association.

- B. Annual Assessments shall be payable in monthly installments, or in such other manner as the Board of Directors of the Association shall determine. Annual assessments shall commence for each Unit on the first day of the first month following the recordation of this Declaration. The first Annual Assessment shall be adjusted according to the number of months remaining in the calendar year. The initial Annual Assessment shall not be in excess of \$900.00.

Notwithstanding any provision to the contrary hereinabove, the Association is required to establish and maintain an adequate reserve fund for the periodic maintenance, repair and replacement of improvements to the Common Property including those Limited Common Areas which the Association may be obligated to maintain. The fund is maintained out of regular assessments for Common Expenses. In addition to said reserve fund, a Working Capital Fund is required for the initial months of the Project's operation equal to at least two months' assessment for each Unit. Each Unit's share of the Working Capital Fund shall be contributed by the Declarant and transferred to the Association at the time of closing of the sale of each Unit and maintained in an account for the use and benefit of the Association. The purpose of the fund is to insure that the Association Board will have cash available to meet unforeseen expenditures, or to acquire additional equipment or services deemed necessary or desirable. Amounts paid into the fund by the Declarant are not to be considered as advanced payments of regular assessments.

- C. The Board of Directors of the Association shall establish an Annual Budget in advance for each fiscal year (which shall correspond to the calendar year, except that in the initial year of operation of the Condominium, the fiscal year shall commence with the closing of the sale of the first Condominium Unit). Such budget shall project all expenses for the forthcoming year which may be required for the proper operation, management and maintenance of the Condominium, including a reasonable allowance for contingencies and reserves, such budget to take into account anticipated income which is to be applied in reduction of the amounts required to be collected as an assessment each year. The Board of Directors shall keep separate, in accordance with Paragraph E hereof, items relating to operations and maintenance from items relating to capital improvements. Upon adoption of such Annual Budget by the Board of Directors of the Association, copies shall be delivered to each Owner of a Condominium Unit although the delivery of a copy of it to each Owner shall not affect the liability of any Owner for such assessment. Should the Board of Directors at any time determine that the assessments levied are insufficient to pay the costs of operation and management of the condominium or in the event of emergencies, the Board of Directors shall have the authority to levy such additional assessments as they may deem necessary; provided, however, that the Board of Directors may not increase assessments by more than ten (10%) percent above the previous year's assessment without the affirmative vote of a Majority of Unit Owners at a meeting of the Association where a quorum is present. In the event the Association is faced with unexpected expenses of whatever nature, the Board of Directors may call for

Special Assessments to pay for such expenses, provided, however, that no Special Assessment may be levied against the members without the affirmative vote of a Majority of Unit Owners.

- D. The Board of Directors of the Association, in establishing the Annual Budget for operation, management, and maintenance of the Condominium shall designate a sum to be collected and maintained as a reserve fund for replacement of and capital improvements to, the Common Property (herein "Capital Improvement Fund") which shall be for the purpose of enabling the Association to replace structural elements and mechanical equipment constituting a part of the Common Property. The amount to be allocated to the Capital Improvement Fund may be established by the Board of Directors to collect and maintain a sum reasonably necessary to anticipate the need for replacement of Common Property. The amount collected for the Capital Improvement fund shall be maintained in a separate account by the Association, and shall be used only to make capital improvements to Common Property. Any interest earned on the Capital Improvement Fund may be expended for current operation and maintenance.
- E. 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 and managing the Condominium or to the proper undertaking of all acts and duties imposed upon it by this Declaration, the Articles of Incorporation, and the By-Laws of the Association. In no event shall the Declarant be allowed the use of Association funds for the purpose of defraying any of its expenses, reserve contributions or construction costs or to make up any budget deficits while it is in control of the Association. Although all funds and common surplus including other assets of the Association, and any increments thereto or profits derived therefrom or from the leasing or use of Common Property, 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 Condominium Unit. When the Owner of a Condominium Unit shall cease to be a member of the Association, the Association shall not be required to account to such Owner for any share of the funds or assets of the Association, or which may have been paid to the Association by such Owner, as all funds which any Owner has paid to the Association shall constitute an asset of the Association which may be used in the operation and management of the condominium.
- F. The payment of any assessment or installment thereof shall be in default, if such assessment or installment is not paid to the Association within thirty (30) days of its due date. When in default, the delinquent assessment or delinquent installment thereof due to the Association shall bear interest at the rate of ten percent (10%) per annum until paid in full by the Association.
- G. The Owner or Owners of each Condominium Unit shall be personally liable, jointly and severally, to the Association for the payment of all assessments, Annual, Special, or contractual, which may be levied by the Association against such Condominium Unit

while such party or parties are Owner or Owners of a Condominium Unit. In the event that any Unit Owner or Owners are in default in the payment of any assessment or installment owed to the Association, such Unit Owner or Owners shall be personally liable, jointly and severally for interest on such delinquent assessment or installment thereof as above provided, and for all costs of collecting such assessment or installment and interest thereon, including reasonable attorney fees, whether suit be brought or not.

- H. No owner of a Condominium Unit may exempt himself from liability from any assessment levied against his or her Condominium Unit by waiver of the use or enjoyment of any of the Common Property, or by abandonment of the Condominium Unit, or in any other way.
- I. Recognizing that proper operation and management of the Condominium requires the continuing payment of costs and expenses therefor, and that such proper operation and maintenance results in benefit to all of the Owners of Condominium Units, and that the payment of such common expenses represented by the assessments levied and collected by the Association is necessary in order to preserve and protect the investment of each Unit Owner, the Association is hereby granted a lien upon each Condominium Unit and its appurtenant undivided interest in Common Property, which lien shall secure the funds due for all assessments now or hereafter levied against the Owner of each such Condominium Unit, which lien shall also secure all costs and expenses, including a reasonable attorney's fee, which may be incurred by the Association in enforcing this lien upon said Condominium Unit. The lien granted to the Association may be enforced under Article 8, Chapter 44 or Article 2A of Chapter 45 of the North Carolina General Statutes or under N.C.G.S. 47C-3-116 or any such subsequent governing statutes. The lien granted to the Association shall further secure such advances for taxes and payments on account of superior mortgages, liens or encumbrances which may be required to be advanced by the Association in order to preserve and protect its lien, including interest at the rate of ten percent (10%) per annum on any such advances so made. All persons who shall acquire any interest in the ownership of any Condominium Unit, or who may be given or acquire a mortgage, lien, or other encumbrances thereon, are hereby placed on notice of the lien rights granted to the Association, and shall acquire such interest in any Condominium Unit expressly subject to such lien rights.
- J. The lien granted to the Association shall be enforceable from the time of recording a claim of lien in the Public Records of Davie County, North Carolina, which claim shall state the description of the Condominium Unit encumbered thereby, the name of the record owner, the amount due and the date when due. The claim of lien shall be recordable any time after default and the lien shall continue in effect until all sums secured by the said lien shall have been fully paid. Such claims of lien shall include only assessments which are due and fully payable. Such claims of lien shall include only assessments which are due and payable when the claim of lien is recorded, plus interest, costs, attorney fees, advances to pay taxes and prior encumbrances and interest thereon. It shall be signed and verified by an officer or agent of the Association. Upon full payment of all sums secured by such claim of lien, it shall be satisfied of record.

The lien provided for herein shall be subordinate only to the lien of the first mortgage or deed of trust securing the Unit. Any person, firm or corporation acquiring title to any Condominium Unit and its appurtenant undivided interest in Common Property by any foreclosure, deed in lieu of foreclosure or judicial sale of a first mortgage or deed of trust, shall be liable and obligated only for assessments as shall accrue and become due and payable for said Unit and its appurtenant undivided interest in common Property subsequent to the date of acquisition of such title, and it shall not be liable for the payment of any assessments which were in default and delinquent at the time it acquired such title. In the event of the acquisition of title to a Condominium Unit by foreclosure, deed in lieu of foreclosure or judicial sale, any assessment which the party so acquiring title shall not be liable shall be absorbed and paid by all Owners of all Condominium Units as a part of the common expense, although nothing herein contained shall release the party liable for such delinquent assessment by means other than foreclosure.

- K. Whenever any Condominium Unit may be leased, sold or mortgaged by the Owner thereof, the Association, upon written request of the Unit Owners, shall furnish to the proposed lessee, purchaser or mortgagee a statement verifying the status of payment of any assessment which shall be due and payable to the Association by such Unit. Such statement shall be executed by any officer of the Association, and any lessee, purchaser, or mortgagee may rely upon such statement in concluding the proposed lease, purchase or mortgage transaction, and the Association shall be bound by such a statement.

In the event that a Condominium Unit is to be leased, sold or mortgaged at the time when payment of any assessment against the Owner of the Condominium Unit and such Condominium Unit due to the Association shall be in default (whether or not a claim of lien has been recorded by the Association), then the rent, proceeds of such purchase or mortgage proceeds, shall be applied by the lessee, purchaser or mortgagee first to the payment of any then delinquent assessment or installments thereof due to the Association before the payment of any rent, proceeds of purchase or mortgage proceeds to the Owner of any Condominium Unit who is responsible for payment of such delinquent assessment.

Institution of a lawsuit to attempt to collect the payment of any delinquent assessment shall not be an election by the Association which shall prevent it from thereafter seeking, by foreclosure action, enforcement of the collection of any sums remaining owing to it, nor shall proceeding by foreclosure to attempt such collection be deemed to be an election precluding the institution of a suit at law to collect any sum then remaining owing to the Association

26. **Common Surplus**

"Common Surplus", meaning all funds and other assets of the Association (including excess receipts of the Association, including but not limited to assessments, rents, profits, and revenues from whatever source over the amount of the common expense), shall be owned by the Owners of all Condominium Units in the same proportion that the undivided interest in the Common Areas and Facilities appurtenant to each Condominium bears to the total of all

undivided interest in Common Property appurtenant to all Condominium Units; provided, however, that said common surplus shall be held by the Association in the manner and subject to the terms, provisions, and conditions of this Declaration, imposing certain limitations and restrictions upon the use and distribution thereof. Except for distribution of any insurance indemnity herein provided, or upon termination of the Condominium, any attribution of distribution of common surplus which may be made from time to time shall be made to the then Owners of Condominium Units in accordance with their percentage interest in common surplus as declared herein.

27. **Termination**

The Condominium shall be terminated, if at all, in the following manner:

- A. The termination of the Condominium may be effected only by the unanimous agreement of all Condominium Unit Owners expressed in an instrument duly recorded; and, provided that the holders of all liens affecting any of the Condominium Units consent thereunto, or agree, by instrument duly recorded, that their liens be transferred to the percentage of the undivided interest of the Condominium Unit Owner in the Common Area as provided on Exhibit B attached hereto. The termination shall become effective when such agreement has been recorded in the public records of Davie County, North Carolina.
- B. If it is determined, in the manner elsewhere provided, that the Condominium shall not be reconstructed after casualty, the Condominium ownership shall be terminated and the Declaration of Condominium revoked. The determination not to reconstruct after casualty shall be evidenced by a Certificate of the Association certifying as to the facts effecting the termination, which Certificate shall become effective upon being recorded in the public records of Davie County, North Carolina.
- C. After termination of the Condominium, the Condominium Unit Owners shall own the Property as tenants in common in undivided shares and the holders of mortgages and liens against the Condominium Units formerly owned by such Condominium Unit Owners shall have mortgages and liens upon the respective undivided shares of the Condominium Unit Owners. The undivided share or interest owned as tenants in common shall be that percentage of the undivided interest in the Common Areas and Facilities previously owned by each Unit Owner. All funds held by the Association and insurance proceeds, if any, shall be held for the Unit Owners and their Mortgagees, if any, in the same proportion. The costs incurred by the Association in connection with the termination shall be a Common Expense.
- D. The members of the Board of Directors acting collectively as agent for all Condominium Unit Owners, shall continue to have such powers as granted herein, even though the Association may be dissolved upon a termination.

28. **Amendment of Declaration of Condominium**

This Declaration of Condominium may be amended in the following manner:

- A. An amendment to this Declaration of Condominium prior to the Declarant relinquishing control of the Board of Directors shall only occur upon the adoption of a resolution approved by a majority of the Directors. An amendment to this Declaration of Condominium after the Declarant relinquishes control of the Board of Directors may be proposed by the Board of Directors of the Association acting upon a vote of a majority of the Directors, or by the members of the Association owning a majority of the Condominium Units, whether meeting as members or by instrument in writing signed by them. Upon any Amendment to this Declaration being proposed by the Board of Directors or members, such proposed Amendment shall be transmitted to the President of the Association, or other officer of the Association in the absence of the President, who shall thereupon call a Special Meeting of the members of the Association for a date not sooner than twenty (20) days and not later than sixty (60) days from receipt by him of the proposed Amendment. It shall be the duty of the Secretary to give each member written notice of such special meeting, stating the time and place, and reciting the proposed amendment in reasonably detailed form, which notice, if mailed, shall be mailed not less than ten (20) days before the date set for such Special Meeting. If mailed, such notice shall be deemed to be properly given when deposited in the United States Mail addressed to the member at his Post Office Address as it appears on the records of the Association, the postage thereon prepaid. Any member may, by written waiver of notice signed by such member, waive such notice, and such waiver, when filed in the records of the Association, whether before or after the holding of the meeting, shall be deemed equivalent to the giving of notice to such member. At the meeting, the Amendment proposed must be approved by an affirmative two-thirds vote of Unit Owners in order for such Amendment to become effective. At any meeting held to consider such Amendment, the written vote of any member of the Association shall be recognized if such member is not in attendance at such meeting or represented thereat by proxy, provided such written vote is delivered to the Secretary of the Association prior to such meeting or at such meeting. Thereupon such Amendment of this Declaration shall be transcribed and certified by the President and Secretary of this Association as having been duly adopted. The original or an executed copy of such Amendment so certified and executed with the same formalities as a Deed, shall be recorded in the Davie County Public Registry within ten (10) days from the date on which the same became effective.

Nothing in this section shall be deemed to limit the ability of the Declarant to Amend this Declaration for the purpose of exercising any Development right. Notwithstanding the foregoing, no amendment with respect to any of the following matters shall be effective without the consent of mortgagees holding a security interest in at least fifty-one (51%) of the Units then subject to a mortgage or deed of trust:

1. voting rights;
2. increases in assessments that raise the previously assessed amount by more than 25%, assessment liens, or the priority of assessment liens;

3. reductions in reserves for maintenance, repair, and replacement of common elements;
 4. responsibility for maintenance and repairs;
 5. reallocation of interests in the general or limited common elements, or rights to their use;
 6. redefinition of any unit boundaries;
 7. convertibility of units into common elements or vice versa;
 8. expansion or contraction of the project, or the addition, annexation, or withdrawal of property to or from the project;
 9. hazard or fidelity insurance requirements;
 10. imposition of any restrictions on the leasing of units;
 11. imposition of any restrictions on a unit owner's right to sell or transfer his or her unit;
 12. a decision by the owners' association of a project that consists of 50 or more units to establish self-management if professional management had been required previously by the project documents or by an eligible mortgage holder;
 13. restoration or repair of the project (after damage or partial condemnation) in a manner other than that specified in the documents; or
 14. any provisions that expressly benefit mortgage holders, insurers, or guarantors.
- B. No alteration, amendment or modification of the rights and privileges granted and reserved hereunder in favor of Lender shall be made without prior written consent of all Lenders holding mortgages on Condominium Units in the Condominium being first had and obtained.

29. Remedies in Event of Default

The Owner or Owners of each Condominium Unit shall be governed by and shall comply with the provisions of this Declaration and the Articles of Incorporation and By-Laws of the Association as they may be amended from time to time. A default by the Owner of a Condominium Unit shall entitle the Association or the Owners of other Condominium Units to the following relief:

- A. Failure to comply with any of the terms of this Declaration or other restrictions and

regulations contained in the Articles of Incorporation or By-Laws of the Association, or other rules which may be adopted pursuant thereto, shall be grounds for relief including, without limitation, an action to recover sums due for damages, injunctive relief, foreclosure of lien, or any combination thereof. Such relief may be sought by the Association or, if appropriate, by an aggrieved Unit Owner.

- B. Each Unit Owner shall be liable for the expense of any maintenance, repair or replacement rendered necessary by his act, neglect or carelessness, or by that of any member of his family, or his or their guests, employees, agents or lessees, but only to the extent that such expense is not met by the proceeds of insurance carried by the Association. Such liability shall include any increase in fire insurance rates occasioned by use, misuse, occupancy, or abandonment of a Unit or its appurtenances. Nothing herein contained, however, shall be construed so as to modify any waiver by insurance companies of rights of subrogation.
- C. In any proceeding arising because of an alleged default by a Unit Owner, the Association shall be entitled to recover the costs of the proceeding and reasonable attorney fees.
- D. The failure of the Association or any Unit Owner to enforce any right, provision, covenant or condition which may be granted by this Declaration or the other above-mentioned documents shall not constitute a waiver of the right of the Association or of the Unit Owner to enforce such right, provision, covenant or condition in the future.
- E. All rights, remedies and privileges granted to the Association or the Owner or Owners of a Condominium Unit pursuant to any terms, provisions, covenants or conditions of this Declaration or other above-mentioned documents, shall be cumulative, and the exercise of any one or more shall not constitute an election of remedies, nor shall preclude the party thus exercising the same from exercising such other and additional rights, remedies or privileges as may be available to such party at law or in equity.
- F. The failure of Declarant to enforce any right, privilege, covenant or condition which may be granted to it by this Declaration or other above-mentioned documents shall not constitute a waiver of right of the Declarant to thereafter enforce such right, provisions, covenant or condition in the future.
- G. The failure of a lender to enforce any right, provisions, privilege, covenant or condition which may be granted to it or them by this Declaration or other above-mentioned documents shall not constitute a waiver of right of said party or parties to thereafter enforce such right, privilege, covenant or condition in the future,

30. **Rights Reserved unto Lenders and First Mortgage Holders**

As long as any Lender or First Mortgage Holder shall hold any mortgage upon any Condominium Unit or Units or shall be the Owner of any Condominium Unit or Units, such Lender or First Mortgage Holder shall have the following rights:

- A. To examine, upon request and at reasonable times and upon reasonable notice, the books and records of the Association; and to be furnished at least one copy of the Annual Financial Statement and Report of the Association, such Financial Statement and Report to be furnished by April of each calendar year.
- B. To be given written notice by the Association of the call of any meeting of the membership, which notice shall state the purpose of such meeting, and to designate a representative to attend.
- C. To be given written notice of default of any Owner owning a Condominium Unit encumbered by a mortgage held by a Lender or First Mortgage Holder, such notice to be sent to the place which it may designate in writing.
- D. To be given written notice of any loss to, or taking of, the common elements of the condominium if such loss or taking exceeds \$10,000.00 or damage to a Condominium is in excess of \$1,000.00.
- E. To receive written notice of any condemnation or eminent domain proceeding or proposed acquisition by a condemning authority.

Whenever any Lender or First Mortgage Holder desires the provisions of this Declaration to be applicable to it, it shall serve written notice of such fact upon the Association by Registered Mail or Certified Mail addressed to the Association and sent to its address stated herein, identifying the Condominium Unit or Units upon which any such Lender or First Mortgage Holder holds any mortgage, or identifying any condominium Units owned by it, together with sufficient facts to identify such mortgages and which notice shall designate the place to which the notices are to be given by the Association to such Lender or First Mortgage Holder.

31. Voting Rights of Unit Owners in the Association

Members of the Association shall be entitled to vote in accordance with such members' percentage of undivided interests in the Common Areas and Facilities, as shown on Exhibit B attached hereto and made a part hereof.

32. Additional Provisions

- A. The Association is required to make available to Unit Owners and lenders and to holders insurers or guarantors of any first mortgage, current copies of the Declaration, By-Laws, other rules concerning the Project, and the books, records and financial statements of the Association. "Available" means available for inspection, upon request, during normal business hours or under other reasonable circumstances.
- B. The Association, after to passage of control from Declarant, is bound to contracts or leases (including a management contract) unless there is just cause to terminate the

contract or lease. If the Association intends to not to renew an existing contract or lease which is yearly in term, then the Association must give ninety (90) days notice to the other party prior to the expiration of the existing contract.

- C. The Association shall have the right to grant permits, licenses, and easements over the Common Property for utilities, roads and other purposes reasonably necessary or useful for the proper maintenance of operation of the Project.
- D. In addition to the lender's rights as set forth above, upon written request to the Association, identifying the name and address of the holder, insurer, or guarantor and the Unit number or address, any mortgage holder, insurer, or guarantor will be entitled to timely written notice of:
- (1) Any condemnation or casualty loss that effects either a material portion of the Project or the Units securing its mortgage;
 - (2) Any 60-day delinquency in the payment of assessments or charges owed by the owner of any Unit on which it holds the mortgage;
 - (3) A lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Owner's Association; and
 - (4) any proposed action that requires the consent of a specified percentage of mortgage holders.
- E. Should Fannie Mae (FNMA) approve the Property, Declarant shall maintain the FNMA approval. Upon transfer of control of the Board of Directors, however, the Association shall be responsible for maintaining FNMA approval of the property, which includes submission of FNMA Form 1028.

33. Reservations by Declarant

The Declarant reserves the right to retain ownership of the areas designated as the "storage facilities" and the lot fronting on Oak Street. The Declarants further reserve for themselves, their heirs, successors, and assigns, easements of ingress and egress and utilities, including but not limited to sewer, water, and electrical, at such locations to be determined in the sole discretion of the Declarants for the benefit of the "storage facilities" and the lot fronting on Oak Street. See attached Exhibit B for description of these areas.

34. Miscellaneous

- A. In the event that any of the terms, provisions or covenants of this Declaration are held to be partially or wholly invalid or unenforceable, such holding shall not affect, alter, modify or impair in any manner any of the other terms, provisions or covenants hereof or the remaining portions of any terms provisions or covenants held to be partially invalid or

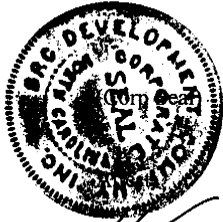
unenforceable. In the event of any conflict between any provisions of his Declaration and the North Carolina Condominium Act, the provisions of the North Carolina Condominium Act shall control.

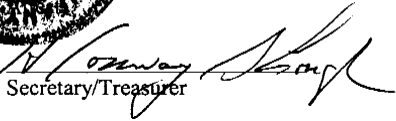
- B. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan of Condominium ownership. Throughout this Declaration, whenever appropriate, the singular shall include the plural and the masculine gender the feminine or neuter. The article headings are for convenience of reference only and shall not be considered items of this Declaration.
- C. The restrictions and burdens imposed by the covenants of this Declaration shall constitute covenants running with the land, and shall constitute an equitable servitude upon which Condominium Unit, and its appurtenant undivided interest in the Common Property. This Declaration shall be binding upon Declarant, its successors and assigns, and upon all parties who may subsequently become Owners of the Condominium Units in the Condominium and their respective heirs, legal representatives, successors and assigns.
- D. The following named individual is designated as the person to receive service of process of the Association:
- E. The Condominium Regime created hereby may not be amended or merged with a successor regime without the prior approval of the Veterans Administration.

IN WITNESS WHEREOF, the GRANTOR has caused this instrument to be signed in its corporate name by its duly authorized officers and its seal to be hereunto affixed, the day and year first above written.

BRC DEVELOPMENT COMPANY, INC.
A North Carolina Corporation

BY: 
President

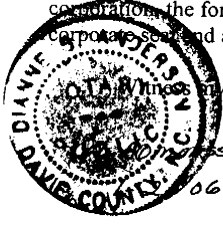



Secretary/Treasurer

STATE OF NORTH CAROLINA

COUNTY OF Davie

I, a Notary Public, of the aforesaid County, do hereby certify that H. Conway Shough, personally came before me this day and acknowledged that he is Secretary of BRC Development Company, Inc., and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its President, sealed with its corporate seal and attested by him as its Secretary.



Witness my hand and official stamp or seal, this 2nd day of APRIL, 2003.

Dianne S. Anderson
Notary Public

STATE OF NORTH CAROLINA

COUNTY OF DAVIE

The foregoing certificate(s) of DIANNE S. ANDERSON Notary Public of Davie County

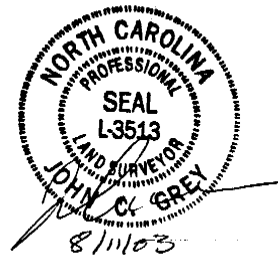
is/~~are~~ certified to be correct. This the 5 day of September, 2003.

M. Brent Shoaf
Register of Deeds

By: Doris C Williams
~~Deputy~~ Assistant

EXHIBIT A"
Milling Way Garden Villas

BRC Development Company, Inc.
Tax Map I-5-9
Mocksville Township, Davie County
Db 437, Pg 48-50



Beginning at a existing iron in the Northwest corner of Dennis A. Palmer (Deed Book 157 Page 146); Northeast corner of BRC Development Company, Inc (Deed Book 437 Page 48-50); thence proceeding from the point of beginning as follows:

1. S 18° 22' 16" W 286.18' to a existing iron pipe, Southwest corner of Dennis A. Palmer, thence;
2. S 73° 30' 45" E 199.93' to a existing iron pipe, Northwest corner of Mocksville Shiloh Baptist Church (Deed Book 260 Page 184), thence;
3. S 7° 48' 59" W 155.19' to existing iron pipe, a corner to Mocksville Shiloh Baptist Church, thence;
4. S 6° 32' 15" W 153.40' to a new iron rebar, a corner to New Jerusalem Holiness Church, thence;
5. S 6° 32' 15" W 168.16" to a new iron rebar, a corner to Mocksville Shiloh Baptist Church, thence;
6. S 6° 32' 15" W 123.35' to a new iron rebar, in the Norfolk Southern Railroad Right-of-Way, thence with said Right of Way;
7. S 78°17' 33" W 316.63' a chord distance for an arc to the left (R=1488.33) to a new iron rebar in the Right of Way of Oak St., thence with said Right of Way;
8. N 68° 9' 45" W 94.04' to an existing axel, the Southeast corner of Norma Jean Beauchamp (Db 458 Pg 831), thence with the Beauchamp line;
9. N 17° 33' 55" E 152.79' to a new iron rebar at the Northeast corner of the Beauchamp tract, thence;
10. N 67° 43' 56" W 296.70' to a new iron rebar in the Right-of Way of Oak Street, thence;
11. N 17° 28' 8" E 60.82' to a new iron rebar, thence;
12. S 72° 31' 52" E 25.00' to a new iron rebar, thence;
13. N 47° 45' 0" E 120.00' to a new iron rebar, thence;
14. N 42° 15' 0" W 395.62' to a new iron rebar in the line of Betty S. Foster, et. al. (Db 493 Pg 509), thence;
15. N 6° 19' 54" W 26.82' to a new iron rebar, thence;
16. N 0° 13' 25" W 94.63' to a new iron rebar, a corner to Bobby O. Mott (Db 493 Pg 505), thence;
17. N 23° 4' 15" E 72.65' to a new iron rebar in the line of Bobby O. Mott (Db 146 Pg 557), thence with Mott's line;
18. S 72° 20' 29" E 252.91' to a existing iron pipe, the Southwest corner of Andrew D. Brown (Db 174 Pg 431), thence with Brown's line;
19. S 72° 42' 8" E 186.16' to a existing iron pipe, the Southeast corner Andrew D. Brown, thence with Brown's Eastern line ;
20. N 18° 16' 9" E 295.19' to a existing iron in the Right-of Way of Milling Road, thence, with the Right of Way of Milling Road;
21. S 70° 58' 8" E 199.70' to the point and place of beginning;

Containing 11.631 acres more or less.

This property contains a clearing debris landfill platted in Plat Book 8 on page 26 in the Davie County Registry. For further boundary reference see Db 437 Pg 48-50 in the Davie Co. Registry and also the exhibit map drawn by Grey Engineering, Inc. dated 07/25/03. (Project 255.001).