

DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS  
FOR  
ASHER TOWNHOMES

Prepared by and after recording mail to:  
John T. Higgins, Jr.  
Higgins Benjamin, PLLC  
301 N. Elm St., Ste. 800  
Greensboro, NC 27401

# Table of Contents

	<u>Page</u>
ARTICLE I	
<u>Definitions</u> .....	1
Section 1 “Allocated Interest” .....	1
Section 2 “Association” .....	1
Section 3 “Bylaws” .....	1
Section 4 “Common Elements” .....	1
Section 5 “Common Expenses” .....	2
Section 6 “Declarant” .....	2
Section 7 “Declarant’s Development Period” .....	2
Section 8. “Dwelling” .....	2
Section 9 “Executive Board” .....	2
Section 10 “FHA” .....	2
Section 11 “Improved Lot” .....	2
Section 12 “Lot” .....	2
Section 13 “Master Plan” .....	2
Section 14 “Member” .....	2
Section 15 “Owner” .....	2
Section 16 “Planned Community Act” .....	3
Section 17 “Plat” .....	3
Section 18 “Properties” .....	3
Section 19 “Special Declarant Rights” .....	3
Section 20 “Water Detention Facility” .....	3
Section 21 “Water Quality Conservation Easements” .....	3
ARTICLE II	
<u>Property Rights</u> .....	3
Section 1 Owners’ Easements of Enjoyment .....	3
Section 2 Delegation of Use. ....	4
Section 3 Parking Rights and Restrictions .....	4
Section 4 Leases of Dwellings .....	4
ARTICLE III	
<u>Easements - Conveyance of Real Property Interests</u> .....	5
Section 1 Utility and Drainage Easements. ....	5
Section 2 Other Easements. ....	5
Section 3 Unintentional Encroachments. ....	5
Section 4 Suspensions. ....	5
Section 5 Mortgaging Common Elements .....	5
Section 6 Dedication or Transfer of Common Elements .....	6
Section 7 Sign Easements. ....	6
Section 8 Easements Reserved by Declarant .....	6

ARTICLE IV

Membership and Voting Rights ..... 7  
Section 1 Membership..... 7  
Section 2 Classes of Membership..... 7  
Section 3 Right of Declarant to Appoint Executive Board of The Association. .... 7  
Section 4 Declarant’s Release of Rights..... 7

ARTICLE V

Covenant for Maintenance and Assessments ..... 8  
Section 1 Creation of the Lien and Personal Obligation of Assessments..... 8  
Section 2 Purpose of Assessments..... 8  
Section 3 Maximum Annual Assessment..... 9  
Section 4 Special Assessments..... 9  
Section 5 Notice and Quorum for Any Action Authorized under this Article. .... 9  
Section 6 Date of Commencement of Annual Assessments: Due Dates..... 10  
Section 7 Effect of Nonpayment of Assessments: Remedies of the Association .. 10  
Section 8 Effect of Default in Payment of Ad Valorem Taxes or Assessments  
for Public Improvements by Association..... 10  
Section 9 Subordination of the Lien to Mortgages..... 10  
Section 10 Exempt Property..... 11  
Section 11 Working Capital Funds..... 11

ARTICLE VI

Maintenance of Common Elements, Other Maintained  
Improvements and Lots..... 11  
Section 1 Maintenance To Be Performed by the Association..... 11  
Section 2 Association’s Standard of Maintenance..... 12  
Section 3 Owners’ Maintenance Responsibilities ..... 12  
Section 4 Easement To Perform Maintenance..... 13  
Section 5 Owner’s Standard of Maintenance..... 13  
Section 6 Owner’s Negligence..... 13

ARTICLE VII

Architectural Control ..... 13  
Section 1 The Architectural Control Committee..... 13  
Section 2 Purpose..... 13  
Section 3 Conditions..... 13  
Section 4 Procedures..... 13

ARTICLE VIII

Use Restrictions ..... 14  
Section 1 Land Use and Building Type..... 14  
Section 2 Nuisance..... 14  
Section 3 Animals..... 14  
Section 4 Outside Antennas..... 14  
Section 5 Boats, Trailers and Certain Motor Vehicles..... 15

Section 6	Motorized Vehicles. . . . .	15
Section 7	Garbage and Refuse Disposal. . . . .	15
Section 8	Lakes and Ponds.[Intentionally omitted]. . . . .	
Section 9	Temporary Structures. . . . .	15
Section 10	Sales, Leasing and Marketing. . . . .	15
Section 11	Temporary Office or House. . . . .	15
Section 12	Seasonal Decorations. . . . .	15
Section 13	Mailboxes. . . . .	16
Section 14	Exterior Lights. . . . .	16
Section 15	Utility Servicing. . . . .	16
Section 16	Waivers. . . . .	16
ARTICLE IX		
	<u>Signs</u> . . . . .	16
ARTICLE X		
	<u>Insurance</u> . . . . .	16
Section 1	Insurance for Owners' Lots Improvements . . . . .	16
Section 2	Insurance Coverage for Common Elements . . . . .	17
Section 3	Reconstruction or Repair of Casualty Damage. . . . .	18
ARTICLE XI		
	<u>Rights Reserved unto Institutional Lenders</u> . . . . .	18
Section 1	Entities Constituting Institutional Lenders. . . . .	18
Section 2	Obligation of Association to Institutional Lenders. . . . .	18
Section 3	Requirements of Institutional Lender. . . . .	19
ARTICLE XII		
	<u>General Provisions</u> . . . . .	19
Section 1	Enforcement. . . . .	19
Section 2	Severability. . . . .	19
Section 3	Amendment and Termination. . . . .	19
Section 4	Annexation. . . . .	20
Section 5	Insurance Obligations. . . . .	21
Section 6	Party Walls. . . . .	21
Section 7	FHA/VA Approval. . . . .	21
Section 8	Declaration To Be Controlling Document. . . . .	21
Exhibit A	. . . . .	24

NORTH CAROLINA  
GUILFORD COUNTY

DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS  
FOR ASHER TOWNHOMES

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR ASHER TOWNHOMES (herein after referred to as the "Declaration"), made as of \_\_\_\_\_ by D. Stone Builders, Inc., a North Carolina corporation (hereinafter referred to as "Declarant"), and consented to by Triad Business Bank, (hereinafter referred to as "Lender").

W I T N E S S E T H:

WHEREAS, Declarant is the owner of certain property in the County of Guilford, State of North Carolina, described as follows:

All of that property more particularly described in **Exhibit A** attached hereto and incorporated herein by reference (hereinafter referred to as the "Subject Property"); and

WHEREAS, Declarant desires to subject the Subject Property to the Declaration as provided herein;  
and

WHEREAS, Declarant is the owner of the fee title to all of the Subject Property.

NOW, THEREFORE, Declarant hereby declares that all of the Subject Property shall 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, and which shall run with the real property and be binding on all parties, their heirs, successors and assigns having any right, title or interest in the described properties or any part thereof, and shall inure to the benefit of each owner thereof.

ARTICLE I  
Definitions

Any capitalized term first appearing in quotation marks herein and not otherwise defined herein shall have the meaning as provided in the "Planned Community Act" (defined herein below).

Section 1 "Allocated Interest" shall be deemed to mean the pro rata interest associated with each "Lot" in the "Common Elements" as each of those terms are defined herein after.

Section 2 "Association" shall mean and refer to Asher Owners Association, Inc., its successors and assigns.

Section 3 "Bylaws" shall mean the corporate bylaws adopted by the Association as amended from time to time.

Section 4 "Common Elements" shall mean all real property and interests in real property owned by the Association together with any easements and rights of way appurtenant thereto (herein after referred to as the "Other Maintained Improvements") for the common use and enjoyment of the "Owners" (as that term is defined herein after). The Common Elements at the time of the conveyance of the first "Lot" (as that term is defined herein after) are described as being all of that real property to be designated on a recorded Plat or otherwise properly identified as such as "Common Elements" lying within the Subject Property and any appurtenances thereto. "Common Elements" shall also be deemed to include "Limited Common Elements" as that term is defined in the Planned Community Act.

Section 5 “Common Expenses” shall mean and refer to expenditures made by the Association and its financial liabilities as prescribed in the Declaration and/or Bylaws or as otherwise required by law.

Section 6 “Declarant” shall mean and refer to D. Stone Builders, Inc. and/or its assigns designated as such of record in the Guilford County Registry. Such assignment shall include all of the rights and privileges afforded the Declarant hereunder exclusive of any such rights and privileges expressly withheld in such assignment of record. In the event there shall be more than one Declarant, the public record shall provide notice as to which of such parties shall have the controlling interest as the Declarant in the event of a disagreement between or among such parties regarding any decisions or actions to be taken or not taken in such role as the Declarant.

Section 7 “Declarant’s Development Period” shall mean and refer to the period of time commencing on the date this Declaration is recorded in the Office of the Register of Deeds, Guilford County, North Carolina, and continuing until the earlier of (i) December 31, 2032, or (ii) the date when Declarant shall no longer have the right to annex any “Additional Property” pursuant to the provisions of **Article XI, Section 4** hereof.

Section 8. “Dwelling” shall mean and refer to any single-family residence constructed on a Lot in the Properties.

Section 9 “Executive Board” means the body designated in the Declaration to act on behalf of the Association. The Executive Board may also be referred to as the “Board.”

Section 10 “FHA” shall mean and refer to the Federal Housing Administration of the Department of Housing and Urban Development and “VA” shall mean and refer to the Department of Veteran Affairs.

Section 11 “Improved Lot” shall mean and refer to a Lot upon which a completed Dwelling has been constructed and a certificate of occupancy or compliance has been, or could be, issued by the City of Greensboro or the appropriate governmental agency. A Lot with a completed Dwelling thereon shall be deemed “improved” on the first day of the first month after such certificate of occupancy or compliance is, or could have been, issued.

Section 12 “Lot” shall mean and refer to any numbered parcel or plot of land shown upon any recorded subdivision map of the Properties, including re-subdivided Lots as well as additions as provided herein after but with the exception of Common Elements and publicly dedicated streets.

Section 13 “Master Plan” shall mean and refer to the plan(s) for the Properties and the Additional Property now or hereafter approved by the City of Greensboro or other appropriate governmental authority, as such plan(s) may be from time to time amended and approved. Declarant may amend the Master Plan from time to time and is not bound to develop the Properties as shown thereon or to subject all or any part of the land shown thereon to this Declaration.

Section 14 “Member” shall mean and refer to every person or entity who holds membership with voting rights in the Association.

Section 15 “Owner” shall mean and refer to the record Owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the Properties, but excluding those having such interest merely as security for the performance of an obligation.

Section 16 “Planned Community Act” shall mean and refer to the provisions of Chapter 47F of the North Carolina General Statutes as amended from time to time.

Section 17 “Plat” shall be deemed to include any plat depicting the Properties or a portion of the Properties recorded in the Office of the Register of Deeds Office of Guilford County.

Section 18 “Properties” shall mean and refer to the Subject Property, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

Section 19 “Special Declarant Rights” shall mean the rights as defined in Section 47F-1-103(28) of the Act (as amended from time to time) for the benefit of a Declarant, including, but not limited to the following: to complete improvements indicated on plats or plans filed with or referenced in the Declaration; to exercise any development right as defined in the Act; to maintain sales offices, management offices, models and signs advertising the Asher development; to use easements through the Common Elements for the purpose of making improvements within Asher or within real estate which may be added to Asher; and to elect, appoint or remove any officer or Board member of the Association during any period of Declarant control.

Section 20 “Water Detention Facility” shall mean any facility the purpose of which is to manage and control the flow of storm water runoff as required by any governmental body or the agency or department of any governmental body, including any underground storm water filtering devices or sand filters as depicted on any recorded plat of the Properties, the operation and maintenance of which facilities are to be governed by the governmental body, department or agency having jurisdiction thereof.

Section 21 “Water Quality Conservation Easements” shall be deemed to be any easement owned or controlled by any governmental body or the agency or department of any governmental body the purpose of which easement is to control and/or limit the development and/or use of specifically identified real estate in order to protect any source of water, whether above or below ground level.

## ARTICLE II Property Rights

Section 1 Owners’ Easements of Enjoyment. Every Owner shall have a right and easement of enjoyment in and to the Common Elements which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

(a) The right of the Association to suspend the voting rights of an Owner for any period during which any assessment or fine against his Lot remains unpaid; and, for a period not to exceed sixty (60) consecutive days for any infraction of its published rules and regulations;

(b) The right of the Association pursuant to the terms of the Planned Community Act to grant easements and rights of way, to dedicate or transfer all or any part of the Common Elements, other than such portions lying within any Water Quality Conservation Easements, to any public agency, authority or utility (including any entity authorized by the City of Greensboro or Guilford County to supply cable television service or comparable utility) for such purposes and subject to such conditions as may be agreed to by the Executive Board of the Association. No such dedication or transfer shall be effective unless an instrument signed by a majority of the Executive Board, agreeing to such dedication or transfer, has been recorded.

(c) The right of the Association to impose regulations for the use and enjoyment of the Common Elements and improvements thereon, which regulations may further restrict the use of the Common Elements.

(d) The right of the Association to exchange portions of Common Elements with the Declarant for substantially equal areas of the Properties for the purpose of Asherinating unintentional encroachments of houses or other improvements onto portions of the Common Elements.

(e) The right of the Association to permit the use of and to charge reasonable admission and other fees for the use of any recreational facility situated upon the Common Elements.

(f) The Special Declarant Rights.

(g) The right of the Association to exercise any other rights conferred on such associations pursuant to the terms of the Planned Community Act.

**Section 2 Delegation of Use.** Any Owner may delegate his right of enjoyment to the Common Elements to the members of his "Immediate Family," to the tenants of his Dwelling and to his guests, subject to such rules and regulations as may be established from time to time by the Association. "Immediate Family" shall be deemed to be lineal ancestors and their spouses or descendants of the Owner or the Owner's spouse and their spouses as well as the lineal ancestors and their spouses or descendants of the Owner's tenant or such tenant's spouse and their spouses.

**Section 3 Parking Rights and Restrictions.** Owners and Authorized Users shall be permitted to park motor vehicles only in their respective garages and the in driveways serving their respective Lots. Owners, Authorized Users, as well as their respective guests, invitees and licensees shall be permitted to park on the roadways within the Common Elements only for brief periods of time on an irregular, infrequent basis; provided, however, construction traffic shall be allowed to park on one side of the roadways within the Common Elements during construction and as designated by and subject to the regulations of the Association.

Violations of this Section shall constitute a nuisance, and in addition to all other remedies available to it at law and in equity, the Association shall have the right:

(a) To assess fines against an Owner for violations by such Owner and by Authorized Users of the Lot; and

(b) To remove offending vehicles (including construction traffic) from the Common Elements upon the commission of a second offense by an Owner or the Authorized Users and their respective guests, invitees or licensees of the Lot. The costs of such removal and any storage fees shall be the responsibility of the Owner and the Authorized User.

The fines described in paragraph (a) and the costs and fees described in paragraph (b) above in this Section, respectively, shall be deemed to be assessments as set forth in **Article V** of this Declaration and if not paid within thirty (30) days after notice and demand therefor, the Association shall be entitled to the remedies set forth in **Article V, Section 7**.

**Section 4 Leases of Dwellings.** Any lease agreement between an Owner and a tenant for the lease of such Owner's Dwelling shall provide that the terms of the lease shall be subject in all respects to the provisions of the Declaration, the Articles of Incorporation of the Association and Bylaws and that any failure by the tenant to comply with the terms of such documents shall be a default under the terms of the lease. All leases of Lots shall be in writing, and shall be for a term of at least ninety (90) days. The Owner shall provide a copy of any lease on a Lot to the Association to allow the Association to know the identity of the tenant(s). Other than the foregoing there is no restriction on the right of Declarant or any Owner to lease his Lot.

### ARTICLE III

#### Easements - Conveyance of Real Property Interests

**Section 1 Utility and Drainage Easements.** Easements for installation and maintenance of utilities (including cable television service) and drainage facilities are reserved as shall be indicated on recorded Plats



of the Properties. Within such easements no structures, planting or other material shall be placed or permitted to remain which may interfere with the installation and maintenance of utilities, or which may change the direction of flow of drainage channels in the drainage easements, or which may obstruct or retard the flow of water through drainage channels in the easements. An easement is hereby established for the benefit of the appropriate governmental entity (and any other person or firm providing services to the Properties under agreement with or at the direction of the Association) over all Common Elements as may be reasonably necessary for the setting, removal and reading of water meters, and the maintenance and replacement of water, sewer and drainage facilities and for the fighting of fires and collection of garbage. The Association shall have the power and the authority to grant and establish upon, over and across the Common Elements such additional easements as are necessary or desirable for the providing of service of utilities to the Common Elements or Lots.

Section 2 Other Easements. Declarant hereby grants to the Association any rights it has in the improvements located on the Common Elements. The Association shall be responsible for the repair, maintenance and upkeep of all improvements located on the Common Elements, except such permitted improvements placed on the Common Elements by any Owner.

Section 3 Unintentional Encroachments. In the event that any improvements on a Lot (not specifically approved or permitted pursuant to this Declaration) shall encroach upon any Common Elements or upon any other Lot for any reason not caused by the purposeful or negligent act of the Owner or agents of such Owner, then an easement appurtenant to such Lot shall exist for the continuance of such encroachment upon the Common Elements or other Lot for so long as such encroachment shall naturally exist; and, in the event that any portion of the Common Elements shall encroach upon any Lot, then an easement shall exist for the continuance of such encroachment of the Common Elements into any such Lot for so long as such encroachment shall naturally exist.

Section 4 Suspensions. Notwithstanding any other terms of this Declaration, the Association shall have the power to suspend the voting rights of an Owner for any period during which any assessment against his or her Lot remains unpaid, and for a period not to exceed sixty (60) days for any infraction of its published rules and regulations. The Association also may levy such fines as it deems appropriate, not to exceed any limits imposed by the Planned Community Act, against an Owner for any infraction of its published rules and regulations. No such suspension shall constitute a waiver or discharge of the Owner's obligation to pay assessments or abide by all published rules and regulations.

Section 5 Mortgaging Common Elements. The Association, acting through its Executive Board, shall have the power to borrow money for the purpose of improving the Common Elements and facilities thereon and pursuant thereto to mortgage, pledge and encumber with a deed of trust, or hypothecate the Common Elements (referred to collectively as an "Encumbrance"), or any portion thereof, as security for money borrowed; provided, however, that any such action shall be taken only if persons entitled to cast at least eighty percent (80%) of the votes in the Association agree in writing to such action; provided, however, no Encumbrance or foreclosure of the lien thereby created shall cause any Lot or any other portions of the Common Elements to fail to comply with applicable laws, regulations or ordinances, and shall not interfere or obstruct utility service to, or ingress, egress, and regress to or from the Lots or the Common Elements; and provided further that for so long as Declarant shall own any portion of the Property, Declarant must also consent to such action.

In addition, any such Encumbrance shall be subject and subordinate to Special Declarant Rights, the holder of any mortgage irrespective of when executed given by Declarant or any Lot Owner encumbering any Lot; and any provision in this Declaration and in any such Encumbrance to the contrary notwithstanding, the exercise of any rights by the holder of the Encumbrance in the event of a default thereunder shall not terminate or cancel any rights, easements or privileges herein reserved or established for the benefit of

Declarant, or any Lot Owner, or the holder of any other encumbrance irrespective of when executed given by Declarant or any Lot Owner encumbering any Lot or other portions of the Properties.

**Section 6 Dedication or Transfer of Common Elements.** The Association, pursuant to Section 47F-3-112 of the Planned Community Act, acting through its Executive Board, shall have the right to dedicate or transfer fee title to all or any part of the Common Elements to any public agency, authority, or utility (including any entity authorized by the City of Greensboro or Guilford County to supply cable television service or similar electronic services), or to transfer to any other party for such purposes and subject to such conditions as may be agreed to by the Members. No such dedication or transfer shall be effective unless persons entitled to cast at least eighty percent (80%) of the votes in the Association agree in writing to such action, and by the Declarant if the Declarant then owns any Lot on the Property. No such dedication or transfer shall interfere with or obstruct utility service to, or ingress, egress and regress to or from the Lots or any remaining portions of the Common Elements, or deprive any Lot of its rights of lateral support, or cause any Lot or any remaining portions of the Common Elements to fail to comply with applicable laws, regulations or ordinances.

The Association, acting through its Executive Board, shall have the right to exchange portions of Common Elements with Declarant or an Owner for substantially equal areas of property for the purpose of Asherinating unintentional encroachments of Dwellings or other improvements onto portions of the Common Elements or for the purpose of enhancing the utility of the Common Elements to be retained by the Association.

**Section 7 Sign Easements.** Declarant and the Association shall each have the right to erect within the Common Elements subdivision signs and landscaping and lighting surrounding same. In addition, easements for the maintenance of subdivision signs and landscaping and lighting surrounding same shall be reserved as indicated on recorded Plats of the Properties. Declarant hereby reserves unto itself and grants, gives and conveys to the Association a perpetual, nonexclusive easement over the portions of Lots designated as "sign easements" on the plats of the Properties, now or hereafter recorded, to place, maintain, repair and replace subdivision signs and the lighting fixtures and landscaping surrounding same. The Association shall be responsible for maintaining, repairing and replacing any such signs, landscaping and lighting and the costs of such maintenance, repair and replacement shall be part of the common expenses of the Association, payable by the Owners. In addition, Declarant, for so long as Declarant owns any Lot shown on the Master Plan as that plan is from time to time amended and approved, shall have the right to erect and maintain with the Common Elements and on those portions of any Lot designated "sign easement" signs advertising and promoting the sale and/or leasing of lots and dwellings within the Properties. As to the easements reserved and granted above with respect to those portions of Lots designated "sign easement," Declarant hereby reserves unto itself and gives, grants and conveys to the Association the right of ingress, egress and regress over other portions of such Lots as shall be reasonably necessary to effectuate the purposes stated above. The easements hereby granted shall run with the land in perpetuity and be binding upon and inure to the benefit of all persons and entities now owning or subsequently acquiring all or a part of the Property.

**Section 8 Easements Reserved by Declarant.** Declarant hereby reserves such easements on, across and over the Common Elements as shall be reasonably necessary for (i) the exercise by Declarant of any right herein reserved, including, without limitation Declarant's right, should Declarant elect, to annex the Additional Property, as hereinafter provided, and (ii) the development by Declarant, its successors or assigns, of the Additional Property, should Declarant elect not to annex the Additional Property, including, without limitation, easements for ingress, egress and regress over Common Elements, private roads and streets now or hereafter erected on the Properties and easements for the use of utility lines, fixtures and/or their connections located within the Common Elements for the purpose of providing access, water, light, power, telephone, sewage and sanitary service to the Additional Property. The deed of conveyance of the Common Elements may contain further reservations of easements and rights.

ARTICLE IV  
Membership and Voting Rights

Section 1      Membership. Every Owner of a Lot which is subject to a lien for assessments shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment.

Section 2      Classes of Membership.      The Association shall have two (2) classes of voting membership designated as follows:

Class A. Class A Members shall be all Owners other than the Declarant. Class A Members shall be entitled to one (1) vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be Members. The vote or votes for such Lot shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any Lot.

Class B. The Class B Member shall be the Declarant and shall be entitled to three (3) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership, as the case may be, on the happening of either of the following events, whichever occurs earliest:

(a)      When the total votes outstanding in the Class A membership equals the total votes outstanding in the Class B membership, provided, however, that the Class B membership will be reinstated if after such conversion and before the date stated in the next succeeding subparagraph (b) additional lands are annexed to the Subject Property as provided for hereinafter, containing a sufficient number of Lots to give the Class B membership a total number of votes in excess of the Class A membership; or

(b)      On December 31, 2032.

Section 3      Right of Declarant to Appoint Executive Board of The Association. Notwithstanding anything to the contrary herein, until December 31, 2032 or until Declarant has conveyed each and every Lot within the Properties, Declarant shall have the right to designate and select the Executive Board of the Association (herein after referred to as the "Board"). Whenever Declarant shall be entitled to designate and select any person or persons to serve on any Board of the Association, the manner in which such person or persons shall be designated shall be as provided in the Articles of Incorporation and/or Bylaws of the Association. Declarant shall have the right to remove any person or persons selected by it to act and serve on said Board and to replace such person or persons with another person or other persons to act and serve in the place of any Member of the Executive Board so removed for the remainder of the unexpired term of any Member of the Executive Board so removed. Any Member of the Executive Board designated and selected by Declarant need not be the Owner of a Lot. Any representative of Declarant serving on the Board of Association shall not be required to disqualify himself from any vote upon any contract or matter between Declarant and the Association where Declarant may have a pecuniary or other interest. Similarly, Declarant, as a Member of the Association, shall not be required to disqualify itself upon any contract or matter between Declarant and the Association where Declarant may have a pecuniary or other interest.

Section 4      Declarant's Release of Rights. Declarant shall have the right at any time to release its rights set forth in this Article and/or to terminate the Class B Membership described above by sending written notice of such action(s) to the Board.

ARTICLE V  
Covenant for Maintenance and Assessments

Section 1      Creation of the Lien and Personal Obligation of Assessments. Each Owner for any Lot,

by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association (a) annual assessments or charges as provided herein including interest and late fees, costs and reasonable attorney's fees; (b) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided; and (c) to the appropriate governmental taxing authority: (1) a pro rata share of ad valorem taxes levied against the Common Elements; and, (2) a pro rata share of assessments for public improvements to or for the benefit of the Common Elements if the Association shall default in the payment of either or both for a period of six (6) months. The annual and special assessments (and any construction fee, penalties and fines) together with interest, costs and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the Lot against which each such assessment or charge is made. Each such assessment and charge, together with interest, costs and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such Lot at the time when the assessment or charge fell due. The personal obligation for the delinquent assessments or charges shall not pass to his successors in title unless expressly assumed by them.

## Section 2 Purpose of Assessments.

(a) The Association is responsible for maintaining any Water Detention Facility as may be shown on the Plat, any subsequent plat of the Properties or which Water Detention Facility may be deemed otherwise to be Other Maintained Improvements, all as directed by the governmental office or body having jurisdiction for watershed protection over the area that includes the Properties. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the residents of the Properties, related to the maintenance, use and enjoyment of the Common Elements, or to those improvements outside of the Common Elements but which benefit the Properties, including but not limited to the maintenance of streets within the Common Elements that have not been accepted for dedication by a public authority, roadway medians and islands (including medians and islands located in dedicated rights-of-way within the Properties), privacy walls, storm drainage facilities, the maintenance of dams and ponds, including retention or detention ponds, or other bodies of water, if any, located within the Common Elements; the maintenance of any private drainage easements located within the Properties; sidewalks and street lights and in particular for the acquisition, improvement and maintenance in good repair and safe condition any Water Detention Facility area and all other facilities constructed or installed in connection with the drainage of the Properties into any Water Detention Facility devoted to this purpose (such improvements may be hereinafter collectively referred to as "Other Maintained Improvements"). Expenditures may include, but are not limited to the following: the costs of repairs; replacements and additions; the cost of labor; equipment; materials; management and supervision; the extension and provision of utility services to the Common Elements; the payment of taxes assessed against the Common Elements and/or the payment of assessments for public improvements to the Common Elements assessed by any governmental body having jurisdiction over the Common Elements; the procurement and maintenance of insurance (including, but not necessarily limited to, hazard and liability insurance in such amounts as the Association deems just and proper); the payment of charges for garbage collection service for the Common Elements and the Lots; the employment of attorneys and other professionals to represent the Association when necessary; and such other needs and expenses as may arise and that are related to the purposes of the Association as stated herein.

(b) All monies collected by the Association shall be treated as the separate property of the Association, and such monies may be applied by the Association to the payment of any expense of operating and managing the Properties, or to the proper undertaking of all acts and duties imposed upon it by virtue of this Declaration, the Articles of Incorporation and the Bylaws. As monies for any assessment are paid unto the Association by any Lot Owner, the same may be commingled with monies paid to the Association by the other Lot Owners. Although all funds and common surplus, including other assets of the Association, and any increments thereto or profits derived therefrom shall be held for the benefit of the Members of the Association, no Member of the Association shall have the right to assign, hypothecate, pledge or in any manner transfer his membership interest therein, except as an appurtenance to his Lot. When a Lot Owner shall cease to be a Member of the Association by reason of his divestment of ownership of his Lot, by

whatever means, 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 monies which any Owner has paid to the Association shall be and constitute an asset of the Association which may be used in the operation and management of the Properties.

(c) The Association shall establish and maintain an adequate reserve fund for the periodic maintenance, repair and replacement of improvements to the Common Elements and those other portions of the properties which the Association may be obligated to maintain. Such reserve fund is to be established out of regular assessments for Common Expense.

(d) The assessments as provided herein may be collected on a monthly, quarterly or annual basis as determined by the Executive Board; however, they shall be collected no more infrequently than annually.

Section 3 Maximum Annual Assessment. All annual assessments shall be fixed at a uniform rate for all Lots. Until January 1 of the year immediately following the year of conveyance of the first Lot to an Owner, the maximum assessment shall be Two Thousand Four Hundred Sixty Dollars per year or Two Hundred Five and No/100 Dollars (\$205) per month.

(a) The maximum annual assessment for the calendar year immediately following the year in which conveyance of the first Lot to an Owner is made and for each calendar year thereafter shall be established by the Board. The maximum annual assessment for all Lots may be increased by the Board without approval by the membership by an amount not to exceed ten percent (10%) of the maximum annual assessment of the previous year.

(b) The maximum annual assessment for the calendar year immediately following the year in which conveyance of the first Lot to an Owner is made and for each calendar year thereafter may be increased without limit by a vote of two-thirds (2/3) of each class of Members who are voting in person or by proxy, at a meeting duly called for this purpose.

(c) The Board shall fix the annual assessment at an amount not in excess of such maximum annual assessment.

Section 4 Special Assessments. In addition to the annual assessments authorized above, in any calendar year the Association may levy a special assessment for the purpose of defraying a shortage due to the failure of the regular annual assessments to cover the obligations of the Association and/or the costs of any construction, reconstruction, repair or replacement of (i) capital improvements upon the Common Elements, or (ii) Other Maintained Improvements, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of the Declarant during the Declarant's Development Period and of two-thirds (2/3) of the votes of each class of Members who are voting in person or by proxy at a meeting duly called for this purpose. All such special assessments shall be fixed at a uniform rate for all Lots. Such special assessments may be collected on a monthly, quarterly or annual basis.

Section 5 Notice and Quorum for Any Action Authorized under this Article. Written notice of any meeting called for the purpose of taking any action authorized under this Article shall be sent to all Members affected thereby not less than fifteen (15) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast sixty percent (60%) of all the votes of the membership entitled to vote thereon shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 6 Date of Commencement of Annual Assessments: Due Dates. The annual assessments

provided for herein shall be collected on a monthly, quarterly, semi-annual or annual basis as determined by the Board, in advance, and shall commence as to each Lot on the day immediately following the day that the Lot is conveyed to an Owner by the Declarant. The initial installment of annual assessments shall be prorated for the balance of the then current payment period as measured from the date of such conveyance of the Lot from the Declarant to the Owner. Any requirement of the purchasing Owner's lender that additional dues are to be paid to the Association shall be paid by the purchasing Owner and not by the Declarant.

At least thirty (30) days in advance of each annual assessment period, the Board shall fix the amount of the annual assessment and shall send written notice to every Owner subject thereto. The due dates shall be established by the Board. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid.

**Section 7 Effect of Nonpayment of Assessments: Remedies of the Association.** Assessments authorized by this Declaration shall be due and payable on the dates established by the Board from time to time. Fees, fines and penalties authorized by this Declaration shall be due and payable thirty (30) days after written notice thereof from the Association to the Owner. Any assessment, fee, fine or penalty not paid within thirty (30) days after the due date shall bear a late payment penalty of \$100.00, which amount may be increased prospectively by a majority vote of the Members in attendance (in person or by proxy) at their annual meeting. The Association may bring an action at law against the Owner personally obligated to pay any past due assessment fee, fine or penalty or may foreclose the lien created herein against the property in the same manner as prescribed by the laws of the State of North Carolina for the foreclosures of deeds of trust. Interest, costs and reasonable attorney's fees for representation of the Association in such action or foreclosure shall be added to the amount of such assessment. No Owner may waive or otherwise escape liability for the assessment provided for herein by non-use of the Common Elements or abandonment of his Lot.

**Section 8 Effect of Default in Payment of Ad Valorem Taxes or Assessments for Public Improvements by Association.** Upon default by the Association in the payment to the governmental authority entitled thereto of any ad valorem taxes levied against the Common Elements or assessments for public improvements to the Common Elements, which default shall continue for a period of six (6) months, each Owner of a Lot shall become personally obligated to pay to the taxing or assessing governmental authority a portion of such unpaid taxes or assessments in an amount determined by dividing the total taxes and/or assessments due the governmental authority by the total number of Lots in the Development. If such sum is not paid by the Owner within thirty (30) days following receipt of notice of the amount due, then such sum shall become a continuing lien on the Lot of the then Owner, his heirs, devisees, personal representatives or assigns, and the taxing or assessing governmental authority may either bring an action at law or may elect to foreclose the lien against the Lot of the Owner.

**Section 9 Subordination of the Lien to Mortgages.** The liens provided for herein shall be subordinate to the lien of any first mortgage or deed of trust to an "Institutional Lender" (as that term is defined in **Section 1 of Article XI** hereinafter). The sale or transfer of any Lot shall not affect the lien or liens provided for in the preceding sections. However, the sale or transfer of any Lot which is subject to any such first mortgage or deed of trust, pursuant to a foreclosure thereof or any proceeding in lieu of foreclosure thereof, shall extinguish the lien of such assessments, fees, fines or penalties as to the payment thereof which shall have become due prior to such sale or transfer. No such sale or transfer shall relieve such Lot from liability for any assessments, fees, fines or penalties thereafter becoming due or from the lien thereof, but the liens provided for herein shall continue to be subordinate to the lien of any first mortgage or deed of trust to an Institutional Lender. In the event of any such foreclosure, the assessments as provided in the preceding Sections of this Article shall begin to accrue anew as to such Lot at the earlier of (i) thirty (30) days after the sale at foreclosure which sale shall not have been upset to be rescheduled for sale or appealed; or (ii) upon the recording of the deed conveying the fee simple title to such Lot.

Section 10 Exempt Property. All property dedicated to, and accepted by, a local public authority and all properties owned by a charitable or nonprofit organization exempt from taxation by the laws of the State of North Carolina shall be exempt from the assessments created herein. However, no land or improvements devoted to use as a Dwelling shall be exempt from said assessments.

Section 11 Working Capital Funds. In order to provide the Association with adequate working capital, upon the initial sale of each Lot from Declarant to an Owner, such Owner shall pay to the Association a contribution equal to one-sixth (1/6th) of the estimated Annual Assessment at the time of the sale. The payments to this fund will be maintained in an Association account for the use and benefit of the Association. Such payment is to be made in addition to any payment due by the Owners of any assessments or fees as provided elsewhere in this Declaration.

ARTICLE VI  
Maintenance of Common Elements, Other Maintained  
Improvements and Lots

Section 1 Maintenance To Be Performed by the Association. The Association shall maintain the Common Elements and shall maintain the grounds of each Lot (exclusive of the following: (i) any area of a Lot located within a fenced-in area; (ii) patios; and (iii) any drives or driveways located on a Lot) which is subject to assessments hereunder as follows: mow, seed and fertilize all grassed areas; mulch, remove dead or diseased trees or shrubs; prune all trees or shrubs; maintain any other landscaped areas and do such other things as the Association determines is necessary to maintain the Common Elements and the grounds of each Lot in an attractive and well-kept condition. The Association shall also perform, maintenance of water and sewer mains in and upon the Common Elements that are not publicly maintained (exclusive of the lateral water and sewer lines connecting such services between the Dwellings and the lines providing such services with other parties); the maintenance of open spaces and streets which have not been accepted for dedication by a public authority; roadway medians and islands (including medians and islands located in dedicated, public rights-of-way within the Properties), if any; drives and parking areas within the Common Elements; the maintenance of dams and ponds, including retention or Water Detention Facility, if any, located within the Common Elements; the maintenance of any underground storm water filtering devices using Best Management Practices as directed by the governmental office having jurisdiction for watershed protection; the maintenance of landscaping and lighting of Common Elements, and entrance ways; maintaining and repairing any streetlights erected by the Association or the Declarant in the rights-of-way of streets (whether public or private) or in any other easement. Once each year the Association will clean out the gutters and down spouts on each Dwelling.

In addition, the Association shall (a) maintain, repair and replace as needed all waterlines serving a Dwelling and all sanitary sewer lines serving the Dwelling all of which are located on the other side of the sewer clean out from the Dwelling; and (b) maintain all entrances to the Properties. In the event the need for any maintenance, repair or replacement required hereunder to be performed by the Association is caused through the willful or negligent act of the Owner, his family, guests or invitees, the cost of such maintenance, replacement or repairs shall be added to and become a part of the assessment to which such Lot is subject.

The Owner of any Lot may plant flowers, shrubbery or trees on his Lot only with the prior written consent of the Association, as provided herein in **Section 3 of Article VII**. No such plantings by an Owner shall reduce the assessment payable by the Owner to the Association.

Section 2 Association's Standard of Maintenance. The Association shall perform its maintenance obligations under this Declaration in a reasonable manner and on a reasonable basis as shall be determined by the Board, in the exercise of its discretion.

Section 3 Owners' Maintenance Responsibilities. Each Owner shall be liable and responsible for the maintenance, repair and replacement, as the case may be, of all portions of the Owner's Lot and the improvements located thereon exclusive of those portions that are the duty and obligation of the Association as expressly provided in **Section 1** of this Article. Accordingly, each Owner shall be liable and responsible for the maintenance, repair and replacement, as the case may be of the interior of the Dwelling, glass surfaces, windows, window screens, porch screens and door screens, doors, storm doors, garage doors, steps, fences, patios and walkways, foundations (including those for stoops and porches), the lateral water and sewer lines connecting such services between the Dwellings and the lines providing such services with other parties, gutters and down spouts, window frames and sashes, air conditioning and heating equipment of the Dwelling and structural components of Dwellings. Except as provided in **Section 1** of this Article above, each Owner also shall maintain, repair and replace all utility lines, fixtures and/or their connections on Owner's Lot which are required to provide water, light, power, telephone, cable television, sewage and sanitary service to his or her Lot which are not publicly maintained, and all flower boxes, water faucets, and exterior lights and flood lights located on his Dwelling and all landscaping located within any fenced in area of his Lot. Owners may also be required to maintain and repair any improvements located on their Lot if (i) the improvements are located within a fenced area of the Lot or within an enclosed Limited Common Element; or (ii) the original installation of such improvements were to have been subjected to the approval of the Architectural Control Committee and such approval was so conditioned upon that requirement of the Owner or the Owner's predecessor(s).

Declarant will have had the Dwelling on each Lot pre-treated for prevention of infestation by wood destroying insects and organisms as required by the building code for the state of North Carolina. Such treatment will be accompanied by a one year guarantee from the company performing the treatment. After the initial one year period, all inspection, treatment and repair of damage to structures on the Lot caused by any infestation by wood destroying insects and other organisms shall be the responsibility of the Owner. Owner shall provide such periodic treatment as may be necessary to prevent future infestation by wood destroying insects and other organisms.

In the event that an Owner neglects or fails to provide any such maintenance as prescribed herein in a manner consistent with other Lots and Dwellings within the Property, the Association may provide such maintenance, and all costs incurred by the Association in providing such maintenance, plus a service charge of twenty percent (20%) of such costs, shall be added to the annual assessment for such Lot and subject such Lot to the lien rights described in **Article IV**; provided, however, that the Association shall first give notice to the Owner of the specific items of maintenance or repair the Association intends to perform and the Owner shall have twenty (20) days from the date of mailing of said notice within which to perform such exterior maintenance himself or herself. The determination as to whether an Owner has neglected or failed to maintain his or her Lot and/or Dwelling in a manner consistent with other Lots and Dwellings within the Property shall be made by the Executive Board of the Association, in its sole discretion.

Section 4 Easement To Perform Maintenance. In order to enable the Association to accomplish the foregoing, there is hereby reserved to the Association the right to unobstructed access over and upon each Lot at all reasonable times to perform maintenance as provided in this Article.

Section 5 Owner's Standard of Maintenance. Lot Owners shall perform their repair, maintenance and upkeep obligations under this Declaration in accordance with Architectural Guidelines and/or Community Standards for the Properties, as they may be promulgated from time to time, and in a reasonable and prudent manner to a standard harmonious with other Lots in The Properties.

Section 6 Owner's Negligence. In the event that the need for maintenance, repair or replacement required to be performed by the Association is caused through the willful or negligent act of the Owner, his



or her family, guest or invitees, or is caused by fire, lightning, windstorm, hail, explosion, riot attending a strike, civil commotion, aircrafts, vehicles and smoke, as the foregoing are defined and explained in North Carolina Standard Fire and Extended Coverage insurance policies, the cost of such maintenance, replacement or repairs shall be added and become a part of the assessment to which such Lot is subject.

## ARTICLE VII Architectural Control

Section 1      The Architectural Control Committee. An Architectural Control Committee consisting of three (3) or more persons shall be appointed (including their replacements) by the Declarant to review and approve all construction within the Properties. The Architectural Control Committee (also referred to herein as the "Committee") shall be appointed by the Board of the Association. In the event the Board does not appoint the members of the Architectural Control Committee, the members of the Board shall serve in such capacity.

Section 2      Purpose. The Committee shall regulate the external design, appearance, use and location of initial construction and subsequent additions to the Properties and of improvements thereon in such a manner so as to preserve and enhance values and to maintain a harmonious relationship among structures and the natural vegetation and topography.

Section 3      Conditions. No improvements, alterations, repairs, excavations, or changes in grade or other work which in any way alters the exterior of any Lot or the improvements or the landscaping located thereon, from its natural or improved state existing on the date such Lot was first conveyed in fee by the Declarant to an Owner shall be made or done without the prior written approval of the Committee. No building, fence, wall, pool or other structure shall be commenced, erected, improved, altered, removed, made or done and no change to the landscaping shall be effected without the prior written approval of the Committee. The Committee shall approve the location of all improvements on the Lot which are visible or could be expected to become visible from any location within the Properties other than the Lot in question. Any solar panels to be installed on a Lot must be on the back side of the Dwelling and/or garage, and placed in such a manner as to be essentially not visible from the street immediately in front of the Dwelling. The Committee shall also exercise its duties pursuant to **Article VIII** herein after.

Section 4      Procedures. Any person desiring to make any improvement, alteration or change described in **Section 3** of this Article shall submit to the Committee the plans and specifications therefor, showing the nature, kind, shape, height, materials, and location on the site of the improvement. The Committee shall evaluate such plans and specifications in light of the purpose of this Article as set forth in **Section 2** above. In the event the Committee fails to approve, modify or disapprove in writing an application within sixty (60) days after accurate plans and specifications have been submitted to it, approval will not be required and this Article will be deemed to have been fully complied with. The applicant may appeal an adverse Committee decision to the Board of the Association which may reverse or modify such decision by a two-thirds (2/3) vote of the Members of the Executive Board. The Committee may charge a fee of up to \$100 for each such application to cover the reasonable costs of architects and/or engineers retained to assist it in evaluating such plans and specifications. The Members may increase such fee prospectively at their annual meeting which shall then be payable to the Association.

## ARTICLE VIII Use Restrictions

Section 1      Land Use and Building Type. No Dwelling shall be erected or allowed to remain on a Lot if the heated area of the main structure, exclusive of basement, open porches, decks and garages, shall be less than Sixteen Hundred (1600) square feet as measured from the outside wall lines. Each Dwelling shall

be used as a single family residence with no more than eight (8) people living in it at any one time. Both the Declarant and the Executive Board of the Association shall have the right to waive minor violations of, and allow minor variances from, the restrictions contained in this Section, where the same resulted unintentionally or without gross carelessness on the part of any Owner (including, without limitation, Declarant) and/or shall not be materially harmful to the Properties. Any such waiver granted shall be in writing, and any matter so waived shall no longer be deemed a violation of the covenants.

**Section 2 Nuisance.** No noxious or offensive activity shall be conducted upon a Lot or the Common Elements nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood. In addition, no activity deemed noxious or offensive by the Executive Board shall be carried on upon any Lot or within the Common Elements, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood as determined by said Executive Board. Examples of such offensive activities shall include, but not be limited to, the origination or emission of excessive barking of a dog(s), any loud or disturbing noise or vibrations, the maintenance of an auto repair site, the maintenance of unsightly outdoor storage of personal property (including toys, motorcycles or other motor vehicles, tricycles, bicycles, wood piles or other miscellaneous items) on porches, patios, terraces or yards, or similar unsightly activity not in keeping with the aesthetic character and high level of appearance of the community. The Executive Board, may establish reasonable rules and regulations for enforcing the provisions of this Section.

**Section 3 Animals.** No animals, of any kind shall be kept or maintained on any lot or in any Dwelling except that dogs, cats or other household pets may be kept and maintained provided that they are not kept or maintained for commercial purposes and further provided that they are kept and maintained in compliance with all (i) all laws, ordinances and regulations of the State of North Carolina, the County of Guilford and the City of Greensboro, and (ii) all rules and regulations pertaining thereto as may be adopted from time to time by the Executive Board.

Each Owner owning or having possession, charge, care, custody or control of any dog or other animal shall keep such dog or other animal exclusively upon his or her Lot and housed within the Owner's Dwelling; provided, however, that such dog or other animal may be off the Lot if it is under the control of a competent person and restrained by a chain, leash or other means of adequate physical control. Each Owner will be responsible for cleaning up any and all waste deposited by any animal upon any Lot or the Common Elements.

**Section 4 Outside Antennas.** Except for "dish" and antennas designed to receive direct broadcast satellite service, including direct satellite service, twenty four inches (24") or less in diameter, and antennas designed to receive video programming services via MDS (wireless cable), no outside antennas or satellite dishes and no free standing transmission or receiving towers shall be erected on any Lot within the Properties without the prior written permission of the Architectural Control Committee. Any antenna or satellite dish erected on any Lot within the Properties, shall be a color that blends with its surroundings, shall have a mast only as high as reasonably necessary to receive the intended signal, shall not be visible from any street and shall not be erected on a Lot between the Dwelling and the street on which the Lot fronts.

**Section 5 Boats, Trailers and Certain Motor Vehicles.** No boat, boat trailer, house trailer, travel trailer, motor home, camper, tractor trailer, tractor trailer trucks, or any other such vehicle shall be kept or maintained on any Lot more than two (2) weeks in any calendar year if it is visible from anywhere within the Properties other than the Lot on which it is located; provided, however, such vehicles may be parked in a garage on a Lot if such vehicle can be fully covered by the garage with the garage door closed or may be parked outside if prior written approval has been granted by the Architectural Control Committee.

No garage may be used for residential or recreational purposes, and each Owner shall keep the interior of his or her garage in a neat and orderly condition and shall keep garage doors closed except when

entering or leaving the garage.

The Association, acting through its Executive Board, shall have the power to formulate, publish and enforce rules and regulations concerning parking on the Common Elements or other parts of the Property, as provided herein in **Section 3 of Article II**, and may have towed at the Owner's expense any vehicle which is parked in an area or under such circumstances where parking is not then permitted.

**Section 6 Motorized Vehicles.** Other than within the private streets and driveways, no motorized vehicle shall be allowed on the Common Elements except that which is used for maintenance, repairs or construction as authorized by the Association or such mechanized vehicles as may be reasonably necessary for disabled individuals.

**Section 7 Garbage and Refuse Disposal.** No Lot shall be used or maintained as a dumping ground for rubbish, and all trash, garbage or other waste shall be stored in sanitary containers in accordance with the rules and regulations of any health or public safety authority having jurisdiction over the property. The sanitary container only shall be placed outside at the earliest the evening before garbage pickup day and immediately shall be returned inside the garage after garbage has been picked up. All containers or other equipment shall be kept in clean and sanitary condition. No trash, garbage or other waste may be placed within the Common Elements, except in containers approved by the Executive Board.

**Section 8 Lakes and Ponds.** [Intentionally omitted.]

**Section 9 Temporary Structures.** No trailer, tent or temporary structure located on any Lot shall be used as a residence.

**Section 10 Sales, Leasing and Marketing.** No activities will be engaged in by any Owner and no sign shall be erected or displayed within the Properties that would negatively impact the sales, leasing and marketing of Properties by the Declarant.

**Section 11 Temporary Office or House.** Declarant shall be permitted to erect a temporary office or house on any Lot during the first five (5) years following the recording of this Declaration for the purpose of providing a sales information center and construction office.

**Section 12 Seasonal Decorations.** Temporary seasonal, exterior decorations shall not require the prior approval of the Executive Board or the Architectural Control Committee, but if any such decorations are determined, in the sole discretion of the Executive Board or the Architectural Control Committee, to be distasteful or otherwise disruptive of the aesthetics or visual harmony of the community, the Executive Board or the Architectural Control Committee may require that such decorations promptly and permanently be removed. In the event that an Owner neglects or fails to remove any such decorations at the request of the Executive Board or the Architectural Control Committee, the Association may provide for such removal. In order to enable the Association to accomplish the foregoing, there is hereby reserved to the Association that right to unobstructed access over and upon each Lot at all reasonable items for such purpose and the cost of such removal shall be added to and become a part of the assessment to which such Lot is subject. In no event shall seasonal decorations remain upon a Lot more than two (2) weeks following the holiday or event with which such decorations are associated.

**Section 13 Mailboxes.** Mailboxes shall be of a simple design subject to the approval of the Architectural Control Committee.

**Section 14 Exterior Lights.** Except as may be required by any governmental authority, no high wattage pole lights, flood lights or security lights, such as mercury vapor lights, shall be allowed anywhere

on the Properties except as may be approved by the Board for the portion of the Common Elements. Owners may install incandescent driveway lights up to 60 watts each for every 50 feet if driveway or fraction thereof. Incandescent light fixtures attached to the exterior of the residence and along the walkways up to 150 watts are allowed. No unshielded bulbs shall be allowed. In addition, all lighting must comply with the ordinances of the City of Greensboro.

Section 15 Utility Servicing. All utilities servicing the Lots or the Common Elements must, if at all practical, be located underground. The determination of any exception to this restriction, based upon the impracticality of placing such utilities below ground, shall be made by the Architectural Control Committee.

Section 16 Waivers. Minor violations of **Sections 1 and 4** of this Article may be waived by the Declarant or the Architectural Control Committee.

## ARTICLE IX Signs

Subject to the provisions of North Carolina General Statute 47F-3-121 as modified and amended from time to time, except for signs erected by Declarant or the Association within any Common Elements and signs erected by Declarant on Lots owned or leased by Declarant advertising the sale, lease or other promotion of Lots and Dwellings constructed thereon within the Properties, no sign; permanent flag or flag pole shall be placed or allowed to remain on any Lot except for one (1) "For Sale" or "For Lease" sign, or one other temporary sign to advertise a yard sale or other temporary activity on the Lot and such other temporary sign shall not be permitted to remain on any Lot for more than seventy two (72) consecutive hours. No sign deemed by Declarant or the Association to be a nuisance or a detriment to the Properties shall be permitted or allowed to remain on any Lot within the Properties.

## ARTICLE X Insurance

### Section 1 Insurance for Owners' Lots Improvements

(a) Each Owner may obtain insurance, at his own personal expense, providing coverage upon his Dwelling and Lot improvements, his personal property and for his personal liability as may be permitted or required by law, (herein after referred to as the "Policy").

(b) Insurance policies upon the Dwellings purchased by the Owners must provide that:

(i) The insurer waives its right to subrogation under the policy against any other Owners, members of his household, the Association and their respective tenants, servants, agents and guests;

(ii) The insurer issuing the Policy may not cancel or refuse to renew it until thirty (30) days after notice of the proposed cancellation or non-renewal has been mailed to each Owner and to each mortgagee or beneficiary under a deed of trust to whom certificates or memoranda of insurance have been issued at their respective last known addresses.

### Section 2 Insurance Coverage for Common Elements

(a) Commencing not later than the time of the first conveyance of a Lot to a person other than the Declarant, the following insurance coverage shall be maintained in full force and effect by the

Association covering the operation and management of the Association, and the Common Elements:

(i) Casualty insurance covering the Common Elements shall be procured in an amount equal to 100% of the current replacement cost (exclusive of excavation, foundations, streets and parking facilities) as determined annually by the insurance company providing such coverage. If available, such policy shall contain an "Agreed Amount Endorsement" or an "Inflation Guard Endorsement," as those terms are currently used in the insurance industry. Such coverage shall afford protection against: (a) loss or damage by fire or other hazards covered by the standard extended coverage endorsement; and (b) such other risks as from time to time customarily shall be covered with respect to the improvements within the Common Elements, including, but not limited to, vandalism and malicious mischief. The maximum deductible amount under any policy shall be one percent (1%) of the face amount of the policy. Funds to cover deductible amounts shall be included in the operating reserve account maintained by the Association.

(ii) A comprehensive policy of public liability insurance insuring the Association in the amount not less than One Million Dollars (\$1,000,000.00) for claims for personal injury and/or property damage arising out of a single occurrence, such coverage to include protection against liability for non-owned and hired automobiles and liability for property of others, and, if available, may include coverage for water damage. The amount of such minimum coverage may be increased by a vote of a majority of Allocated Interests represented at an annual meeting of the Association's membership or at a specially called meeting of the membership.

(b) All liability insurance shall contain cross-liability endorsements to cover liabilities of the Owners as a group to an Owner or other Owners.

(c) Premiums upon insurance policies purchased by the Association shall be paid by the Association as Common Expenses to be assessed and collected from all of the Owners in proportion to each Lot's share of the Allocated Interests, unless otherwise specifically allocated by the Executive Board, in its sole discretion.

(d) If the insurance described in this Article is not reasonably available, in the sole determination of the Executive Board of the Association, the Executive Board shall promptly cause notice of that fact to be hand delivered or sent prepaid by United States mail to all Owners. Under such circumstance the obligation of the Association to obtain the Policy shall terminate.

(e) All insurance policies purchased by the Association shall be for the benefit of the Association, and shall provide that all proceeds payable as a result of casualty losses shall be paid to the Association.

### Section 3 Reconstruction or Repair of Casualty Damage

(a) If any part of a Dwelling shall be damaged by casualty, the damaged area shall be reconstructed or repaired unless:

(i) Repair or replacement would violate any state or local health or safety statute or ordinance; or

(ii) Any reconstruction or repair shall be performed substantially in accordance with the original plans and specifications as approved by the City of Greensboro, North Carolina,

or the applicable governmental authority.

(b) Immediately after the casualty causing damage to property for which the Association has the responsibility to insure, 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 Executive Board deems necessary and appropriate. Each Owner shall be deemed to have delegated to the Executive Board of the Association his right to adjust with insurance companies all losses under policies purchased by the Association.

## ARTICLE XI Rights Reserved unto Institutional Lenders

Section 1      Entities Constituting Institutional Lenders. “Institutional Lender” as the term is used herein shall mean and refer to banks, savings and loan associations, insurance companies or other firms or entities customarily affording loans secured by first priority liens as encumbrances on residences, as well as financial entities and agencies and departments of any governmental body that either ensure or guarantee in whole or in part such secured loans.

Section 2      Obligation of Association to Institutional Lenders. So long as any Institutional Lender shall hold any first lien mortgage or deed of trust upon any Lot, or shall be the Owner of any Lot, such Institutional Lender who has provided notice to the Executive Board of its intent and has requested all rights under the Association documents shall have, upon written request therefor, the following rights:

(a)      To inspect the books and records of the Association during normal business hours and to be furnished with at least one (1) copy of the annual financial statement and report of the Association prepared by a certified public accountant designated by the Executive Board of the Association, such financial statement or report to be furnished by April 15 of each calendar year.

(b)      To be given notice by the Association of the call of any meeting of its membership to be held for the purpose of considering any proposed amendment to this Declaration or the Articles of Incorporation or Bylaws or of any proposed abandonment or termination of the Association or the effectuation of any decision to terminate professional management of the Association and assume self-management by the Association.

(c)      To receive notice of any condemnation or casualty loss affecting the Common Elements or any portion thereof.

(d)      To be notified of any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association.

(e)      To have the right to approve any alienation, release, transfer, hypothecation or other encumbrance of the Common Elements, other than those specific rights vested in the Association under **Article II** hereof.

(f)      To be given notice of any delinquency in the payment of any assessment or charge (which delinquency remains uncured for a period of sixty (60) days) by any Owner owning a Lot encumbered by a mortgage or deed of trust held by the Institutional Lender, such notice to be given in writing and to be sent to the address it may designate in writing.

Section 3      Requirements of Institutional Lender. Whenever any Institutional Lender desires to avail itself of the provisions of this Article, it shall furnish written notice thereof to the Association by

certified mail at its registered office identified as such in the office of the North Carolina Secretary of State. The notice must identify the Lot or Lots upon which any such Institutional Lender holds a first lien or identifying any Lot or Lots owned by such Institutional Lender and such notice shall designate the place to which notices, reports or information are to be given by the Association to such Institutional Lender.

## ARTICLE XII General Provisions

Section 1 Enforcement. The Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of the Declaration. Failure by the Association, the Declarant or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. The Association shall have the right to request that law enforcement, public safety and animal control officers come on the Common Elements to facilitate the enforcement of the laws, codes and ordinances of any governmental authority. In addition to the preceding portions of this paragraph, the Association shall have the authority to establish fines or to suspend certain privileges or services to be imposed upon Members, who violate the terms of this Declaration and/or the rules and regulations as may be adopted by the Board and approved by the Members at a meeting of the Membership called for that purpose. The procedure for assessing any such imposition of fines or suspension of privileges or services shall be in the form of a hearing to be conducted pursuant to the terms of North Carolina General Statute Section 47F-3-107.1 as amended or replaced from time to time.

In any proceeding arising out of an alleged default by an Owner, the Association or other Owner(s), if successful, shall be entitled to recover the costs of the proceedings and such reasonable attorneys fees as may be determined by the court.

Section 2 Severability. The provisions of this Declaration shall be deemed severable, and the invalidity or unenforceability of any provision (or part thereof) of this Contract shall in no way affect the validity or enforceability of any other provision (or remaining part thereof).

Section 3 Amendment and Termination. The covenants, conditions and restrictions of this Declaration shall run with and bind the land for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. This Declaration shall be terminated if during the 20th year of such initial period or during the 10th year of any successive automatic extension period, at least 90% of the membership votes at a properly convened meeting to terminate the Declaration. Notice of such termination must be signed by both the then-current President, attested to by the Secretary of the Association, and properly recorded in the Guilford County Registry.

This Declaration may be amended by an instrument signed by the President of the Association, attested to by the Secretary of the Association, and properly recorded in the Guilford County Registry (the "Amendment"). Such Amendment shall certify and confirm that pursuant to the by-laws of the Association (i) after proper notification a duly convened meeting of the Members was held; (ii) at such meeting a proper quorum was present; (iii) the Amendment to the Declaration was approved in writing by not less than sixty-seven percent (67%) of the Lot Owners; and (iv) evidence of such approval of the proposed Amendment appears in the Minute Book of the Association. It is further provided that no amendment to the Declaration shall alter any obligation to pay ad valorem taxes or assessments for public improvements, as herein provided, or affect any lien for the payment thereof established herein; however, until December 31, 2031 any such amendment must be consented to by the Declarant. Any amendment or termination of this Declaration must be approved by the governmental body having jurisdiction of the watershed regulations governing the Properties solely for the purpose of assuring that any Water Detention Facility together with

those facilities associated with it shall continue to be properly maintained, and must be properly recorded in the Guilford County Registry to be effective and enforceable. For the purposes of this Section, annexation by the Declarant of “Additional Property” (as defined in the next succeeding **Section 4**) and/or an amendment or modification of the Declaration all as provided in the next succeeding **Section 4** shall not be deemed to be an amendment to the Declaration.

During the period of Special Declarant Rights, Declarant may amend and modify this Declaration in such fashion as deemed by Declarant to be reasonably necessary to correct any defects or mistakes in the Declaration as stated and to carry out and to give full effect to the orderly development of the Properties, including the proposed Additional Property, as intended by Declarant.

**Section 4 Annexation.** Additional real property, including Common Elements (herein after referred to as “Additional Property”), may be subjected to the terms of this Declaration. The circumstances under which such annexations may take place are as follows:

(a) Additional Property may be annexed to the Properties with the consent of sixty-seven percent (67%) of each class of Members.

(b) Additional land located near or in the general area of the Properties (including additions thereto pursuant to this instrument) may be annexed and made a part of the Properties as Additional Property by the Declarant or its successors and assigns as the Declarant without the consent of Members until December 31, 2031. Any such expansion of this Declaration will subject the Owners of any Lots located on any such Additional Property to be annexed to all the covenants, conditions and restrictions contained herein above in this Declaration and by accepting the deed to such Lots such Owners shall agree to pay any assessments levied pursuant thereto. It is further understood that such expansion and annexation may include recreational facilities and Common Elements to be used by all of the Lot Owners. Any such annexation of Additional Property or dedication of additional Common Elements to this Declaration and Amendment of this Declaration shall be done in a manner not to exceed the limitations of any Water Quality Conservation Easements as determined by the governmental body having jurisdiction of the watershed regulations governing the Properties.

(c) During the period of Special Declarant Rights, Declarant may amend and modify this Declaration in such fashion as deemed by Declarant to be reasonably necessary to carry out and to give full effect to the orderly development of the Properties, including the proposed Additional Property, as intended by Declarant.

**Section 5 Insurance Obligations.** Commencing not later than the time of the first conveyance of a Lot from the Declarant to a Class A Owner, the Association shall have acquired and shall continue to maintain property and liability insurance pursuant to the terms of North Carolina General Statute Section 47F-3-113 as amended or replaced from time to time.

**Section 6 Party Walls.**

(a) Each wall that is built as a part of the original construction of the homes upon the Properties and placed on the dividing line between Lots shall constitute a “Party Wall,” and, to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and liability for property damage due to negligence, or willful acts or omissions shall apply thereto.

(b) The cost of reasonable repair and maintenance of a Party Wall shall be shared by the Owners who make the use of the wall in proportion to such use.

(c) If a Party Wall is destroyed or damaged by fire or other casualty, any Owner who has used



the wall may restore it, and if the other Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use without prejudice, subject however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

(d) In the event of any dispute arising out of a situation involving the question of repair or maintenance of a Party Wall or any other aspect of this Article, the parties involved shall resolve any such dispute by arbitration conducted according to the revised Uniform Arbitration Act of the North Carolina General Statutes Chapter 1, Article 45C. Each party shall choose one arbitrator and the arbitrators so chosen shall choose one additional arbitrator, and the decision of a majority of the three shall be binding on the parties thereto.

Section 7 FHA/VA Approval. As long as there is a Class B membership during any time that any deed of trust or mortgage encumbers any Lot which deed of trust or mortgage secures a loan obtained with the assistance of the FHA or VA, the following actions will require the prior approval of the FHA or VA, respectively: annexation of additional properties, dedication of Common Elements, and amendment of this Declaration.

Section 8 Declaration To Be Controlling Document. In the event of a conflict between the terms of the Declaration with either the Articles of Incorporation or the Bylaws, the Declaration shall be deemed to be the controlling document.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has caused this instrument to be executed by its duly authorized officer as of the date first above written.

[Signature is on the following page.]

**D. Stone Builders, Inc.**

By: \_\_\_\_\_  
David B. Stone, President

STATE OF NORTH CAROLINA  
GUILFORD COUNTY

CONSENT

Triad Business Bank, as the holder of the existing loans secured by the deeds of trust on the property referred to in this instrument as the Subject Property under the Deed of Trust recorded in Book 8595, Page 796, of the Guilford County Registry, joins in the execution of this instrument for the purpose of subjecting and subordinating the aforesaid Deed of Trust to the terms and provisions of this Declaration of Covenants, Conditions and Restrictions for Asher Townhomes.

**Triad Business Bank**

By: \_\_\_\_\_  
\_\_\_\_\_, Vice President  
[Print name of officer]

STATE OF NORTH CAROLINA  
COUNTY OF GUILFORD

I, the undersigned Notary Public, do hereby certify that \_\_\_\_\_ personally

came before me this day and acknowledged that (s)he is \_\_\_\_\_ President of Triad Business Bank and that, by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by him/her as its \_\_\_\_\_ President. Witness my hand and official seal, this \_\_\_\_\_ day of \_\_\_\_\_ 2022.

[SEAL]

\_\_\_\_\_  
\_\_\_\_\_  
Notary Public

[Print name of notary public]

My Commission Expires: \_\_\_\_\_

STATE OF NORTH CAROLINA  
COUNTY OF GUILFORD

I, the undersigned, a Notary Public for said County and State, do hereby certify that David B. Stone, President of D. Stone Builders, Inc., personally appeared before me this day and acknowledged the due execution of the foregoing instrument on behalf of the company. Witness my hand and official stamp or seal, this \_\_\_\_\_ day of \_\_\_\_\_ 2022.

[SEAL]

\_\_\_\_\_  
\_\_\_\_\_, Notary Public  
[Print name of notary public]

My Commission Expires: \_\_\_\_\_

## EXHIBIT A

(1912 Trosper Rd., Greensboro, NC; Parcel # 137406; Pin # 7858511582)

All of Lot 62 of the subdivision entitled “Subdivision of Brandt Park” a plat of which is recorded in Plat Book 9, Page 39 of the Guilford County Registry; **Save and Except** therefrom those parcels conveyed in Book 1650, Page 122; Book 1767, Page 158; Book 2257, Page 29; and Book 4165, Page 1051, all of which properties, including the “Subject Property”, were conveyed originally in Book 1650, Page 121.