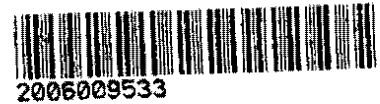


FOR REGISTRATION JUDITH A. GIBSON  
REGISTER OF DEEDS  
MECKLENBURG COUNTY, NC  
2006 JAN 18 09:49 AM  
BK: 19902 PG: 467-486 FEE: \$68.00  
INSTRUMENT # 2006009533



2006009533

Drawn by and mail to:  
R. Dale Fussell (BOX 214)  
447 South Sharon Amity Road  
Suite 140  
Charlotte, NC 28211

STATE OF NORTH CAROLINA  
COUNTY OF MECKLENBURG

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
MEETING STREET AT INDIGO ROW

THIS DECLARATION IS MADE THIS 19th day of December, 2005, by MS ELM TOWNS, LLC, a North Carolina limited liability company (hereinafter referred to as "Declarant").

WITNESSETH:

WHEREAS, Declarant is the owner of the real property shown on map of the Meeting Street Towns At Elm subdivision (aka Meeting Street At Indigo Row), recorded in Map Book 44 Page 321 in the Mecklenburg County, North Carolina, Public Registry, which property is more particularly described in Section 1. of Article II below; and

WHEREAS, Declarant desires to create thereon an exclusive residential community of single-family attached residential units to be named **Meeting Street At Indigo Row**; and

WHEREAS, Declarant desires to insure the attractiveness of the community, to prevent any future impairment thereof, to prevent nuisances, to preserve, protect and enhance the values and amenities of all Property within the community: to provide for the maintenance and upkeep of the Common Areas, as hereinafter defined; and including the private streets, parking areas, fencing and any entrance monuments; and of the exterior of all residential units and those areas of the lots which are outside the exterior walls of the residential units and not within the Common Area, and to this end desires to subject the real property described in Section 1 of Article II to the covenants, conditions, restrictions, easements, charges and liens hereinafter set forth, each and all of which is and are for the benefit of said property described below and each owner thereof; and

WHEREAS, to achieve the above objectives, Declarant has deemed it desirable to create an organization to which will be delegated and assigned the power of owning, maintaining and administering the Common Area, maintaining and repairing the exterior of the residential units, administering and enforcing the covenants and restrictions applicable to the community and collecting and disbursing the assessments and charges hereinafter created; and

WHEREAS, Declarant has incorporated under North Carolina law, Meeting Street At Indigo Row Owners Association, Inc. as a non-profit corporation for the purpose of exercising and performing the aforesaid functions;

NOW, THEREFORE, Declarant, by this Declaration of Covenants, Conditions and Restrictions, does declare that all of the Property shown on the aforesaid map of Meeting Street At Indigo Row and described in Section 1. of Article II below, and such additions thereto as may be hereafter made pursuant to Article II hereof, is and shall be held, sold and conveyed subject to the easements, restrictions, covenants and conditions, charges and liens set forth in this Declaration, which are for the purpose of protecting the value and desirability of the Property, and which shall run with the title to the real property, shall be binding on all parties having any right, title or interest in the described Property or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

## ARTICLE I

### DEFINITIONS

Section 1. "Association" shall mean and refer to **Meeting Street At Indigo Row Owners Association, Inc.**, a North Carolina non-profit corporation, its successors and/or assigns.

Section 2. "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 Property, including contract sellers, but excluding contract buyers and those having an interest merely as security for the performance of an obligation.

Section 3. "Property" shall mean and refer to the "Property" described in Article II, Section 1., hereof.

Section 4. "Lot" shall mean and refer to any plot of land, with delineated boundary lines appearing on any recorded subdivision map of the Property (with the exception of Common Area), and shall include all improvements thereon.

Section 5. "Declarant" shall mean and refer to MS ELM TOWNS, LLC., a North Carolina limited liability company, and shall also mean and refer to any person, firm or corporation which shall hereafter become vested, at any given time, with title to two (2) or more undeveloped Lots for the purpose of causing residence/building(s) to be constructed thereon, and any such successor in title to MS ELM TOWNS, LLC. shall be a Declarant during such period of time as said party is vested with title to two or more such Lots, so long as said Lots are undeveloped, developed but un conveyed or improvements constructed thereon are unoccupied, but only during such period.

Section 6. "Common Area" shall mean and refer to all real property owned by the Association for the common use and enjoyment of the Owners. Common Areas, with respect to the property subject to this Declaration, shall be shown on the various plats of Meeting Street At Indigo Row recorded or to be recorded in the Mecklenburg Public Registry and designated thereon as "Common Area", "Common Open Space", or other similar designations, but shall exclude all Lots as hereinabove defined which are shown thereon. "Common Area" shall include all private streets and parking areas, fencing, any entrance monuments, and wastewater and storm water collection systems and/or disposal facilities and other various areas and facilities shown as Common Area on plats as now recorded or as hereafter recorded in the Mecklenburg Public Registry. The Common Area to be owned by the

Association at the time of the conveyance of the first Lot is shown as such on the plat of the Property identified in Section 1 of Article II.

Section 7. "Member" shall mean and refer to every person or entity that holds membership in the Association.

Section 8. "Act" shall mean and refer to the North Carolina Planned Community Act, Chapter 47F, North Carolina General Statutes.

Section 9. "Special Declarant Rights " shall mean the rights as defined in Section 47F-1-103(28) of the Act 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 Meeting Street At Indigo Row; to use easements through the Common Area for the purpose of making improvements within Meeting Street At Indigo Row or within real estate which may be added to Meeting Street At Indigo Row; and to elect, appoint or remove any officer or Board member of the Association during any period of Declarant control.

## ARTICLE II

### PROPERTY SUBJECT TO THIS DECLARATION

Section 1. Property. The property which is and shall be held, transferred, sold, conveyed and occupied subject to this Declaration and within the jurisdiction of the Association is located in Mecklenburg County, North Carolina, and is described as follows:

Being all of Lots 1-44 of the MEETING STREET TOWNS AT ELM subdivision recorded in Map Book 44 Page 321 in the Mecklenburg County Public Registry.

## ARTICLE III

### MEMBERSHIP AND VOTING RIGHTS

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

Section 2. The voting rights of the membership shall be appurtenant to the ownership of the Lots. The Association shall have two (2) classes of voting membership.

(a) Class A. Except as provided below, Class A Members shall be all Lot Owners except the Declarant; and Class A Members shall be entitled to one (1) vote for each Lot (Class A Lot) owned. When more than one (1) person owns an interest (other than a leasehold or security interest) in any Lot, all such persons shall be Members and the vote appurtenant to said Lot shall be exercised as they, among themselves, determine, but in no event shall more than one (1) vote be cast with respect to any Lot.

(b) Class B. Class B Member shall be the Declarant (as defined in this Declaration); and such Member shall be entitled to nine (9) votes for each Lot (Class B Lot) owned.

The Class B membership shall cease to exist and shall be converted to Class A membership with one vote for each Lot owned, on the happening of either of the following events, whichever occurs earlier:

(1) When the total number of votes appurtenant to the Class A Lots equals the total number of votes appurtenant to the Class B Lots; or

(2) On December 31, 2011.

When the Class B Lots cease to exist and are converted to Class A Lots, Declarant shall have the same voting rights as other Owners of Class A Lots.

Provided, further, that nothing herein shall be construed to prohibit Declarant from converting all or part of the Class B membership to Class A membership, with the results set forth above at any time earlier than the alternative events referred to above, by written statement executed by the Declarant and delivered to the Association.

Section 3. Suspension of Voting Rights. Voting rights attributable to an ownership interest in a Lot shall be after notice and opportunity suspended throughout the term for any default under the By-Laws or of this Declaration of Covenants, Conditions and Restrictions by an Owner of such Lot.

Section 4. Control by Declarant. Notwithstanding any other language or provision to the contrary in this Declaration or in the By-Laws, Declarant hereby retains the right to appoint and remove any Members of the Board of Directors of the Association and any officer or officers of the Association until ninety (90) days after the first of the events to transpire outlined in Section 2(b) herein concerning the termination of the Class B membership status of Declarant or until the surrender by Declarant of the authority to appoint and remove directors and officers by an express amendment to the Declaration of Covenants, Conditions and Restrictions executed and recorded by Declarant. Upon the expiration of the period of Declarant's right to appoint and remove directors and officers of the Association pursuant to the provisions of this Section, such right shall automatically pass to the Owners, including Declarant, if it then owns one or more Lots, and a special meeting of the Association shall be called and held within ninety (90) days after the date of the expiration of Declarant's rights hereunder. At such special meeting the Owners shall elect a new Board of Directors which shall undertake the responsibilities of running the Association and Declarant shall deliver to the new Board of Directors the books, accounts, and records which it has kept on behalf of the Association, as well as any agreements or contracts executed by or on behalf of the Association which may still be in effect or operation. Each Owner, by acceptance of a deed to or other conveyance of a Lot, vests in Declarant such authority to appoint and remove directors and officers of the Association as is provided in this Section.

#### **ARTICLE IV**

#### **PROPERTY RIGHTS**

Section 1. Owners' Easements of Enjoyment. Every Owner shall have a right and easement to use and enjoy the Common Area, which right and easement shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

(a) The right of the Association after notice and opportunity to charge reasonable admission and other fees for the use of any recreational facility situated upon the Common Area and to limit the use of said facilities to Owners who occupy a residence on the Property as their principal residence in Mecklenburg County, North Carolina, and to their families, tenants, contract purchasers and guests as provided in Section 2. of this Article IV;

(b) The right of the Association to suspend the voting rights and right of use of the recreational facilities by an Owner for any period during which any assessment against the Owner's Lot remains unpaid; and for any infraction of its published rules and regulations, if any;

(c) The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility 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 the Members entitled to at least eighty percent (80%) of the votes appurtenant to each Class of Lots (Class A and Class B) agree to such dedication or transfer and signify their agreement by a signed and recorded written document; provided that the foregoing shall not preclude the Association or Declarant, without such agreement by

the Members, from granting easements to public authorities or utilities, or to others for the installation and maintenance of electrical, telephone, cablevision, water and sewerage service and drainage facilities upon, over, under and across the Common Area without the assent of the membership when, in the sole opinion of the Board of Directors or Declarant, such easements do not interfere with the use and enjoyment of the Property or are necessary for the convenient use and enjoyment of the Property;

(d) The right of the Association to limit the number of guests of Members;

(e) The right of the Association, with the written assent of Members entitled to at least eighty percent (80%) of the votes appurtenant to each Class of Lots (Class A and Class B) to mortgage, pledge and deed in trust any and all of its real or personal property as security for money borrowed or debts incurred for the purpose of improving the Common Area and facilities, with the rights of such creditors to be subordinate to the rights of the Owners hereunder;

(f) The right of the Association to adopt, publish, amend and enforce rules and regulations as provided in Article X;

(g) The right of the Association or its representative to enter any Lot in order to perform any maintenance, alteration, or repair required herein to be performed by the Association, and the Owner of such Lot shall permit the Association or its representative to enter for such purposes at reasonable times and with reasonable advance notice;

(h) The right of the Association or its representative to enter any Lot in the case of any emergency threatening such Lot or any other Lot for the purpose of remedying or abating the cause of such emergency. Such right of entry shall be immediate;

Section 2. Delegation of Use.

(a) Family. The rights and easement of enjoyment granted to every Owner in Section 1. of this Article IV may be exercised by members of the Owner's family who occupy the residence of the Owner within the Property as their principal residence in Mecklenburg County, North Carolina.

(b) Tenants or Contract Purchasers. The right and easement of enjoyment granted to every Owner in Section 1. of this Article IV may be delegated by the Owner to his or her tenants or contract purchasers who occupy a residence within the Property as their principal residence in Mecklenburg County, North Carolina.

(c) Guests. Common Area may be utilized by guests of Owners, tenants or contract purchasers subject to the rules and regulations of the Association governing said use, as established by the Board of Directors.

Section 3. TV Antennas and Cablevision. The Association may provide one or more central television antennas for the convenience of the Members and may supply cablevision, and the cost of these may be included in annual or special assessments.

## ARTICLE V

### COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each Lot owned within the Property, hereby covenants, and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association (a) annual assessments or charges and (b) special assessments for capital improvements; such assessments to be established and collected as hereinafter provided. The annual and special assessments, 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 is made. Each such assessment, together with interest, costs and reasonable attorney's fees, shall also be the personal

obligation of the Owner of such Lot at the time when the assessment fell due, but not of an Owner's successors in title unless expressly assumed by such successor.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the residents of the Property and in particular for the improvement and maintenance of the Common Areas and of the exterior of the dwellings including the maintenance, repair, and reconstruction of private streets, driveways, walks, street lights, parking areas, fencing and any entrance monuments, the cutting and removal of weeds and grass (excluding in the fenced areas on each Lot, which shall be the responsibility of the Lot Owner), and the removal of trash and rubbish, and for the exterior maintenance of the residences situated upon the Property, as hereinafter provided, all for the use and enjoyment of the Common Area, including, but not limited to, the cost of repairs, replacements, and additions; the cost of labor, equipment, materials, management, and supervision; the payment of taxes and public assessments assessed against the Common Area. In addition, the assessments may be used for the procurement and maintenance of insurance in accordance with this Declaration; the employment of attorneys to represent the Association when necessary; the provision of adequate reserves for the replacement of capital improvements, including, without limiting the generality of the foregoing, roofs, paving, exterior painting, and any other major expense for which the Association is responsible; and such other needs as may arise.

Section 3. Reserves. The Association shall establish and maintain an adequate reserve fund for the periodic maintenance, repair, and replacement of improvements to the Common Areas and to those other portions of the Property, which the Association may be obligated to maintain. Such reserve fund is to be established out of regular assessments for common expense.

Section 4. Maximum Annual Assessment. Until January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment shall be \$2,400 per Lot. Declarant shall not be required to pay any dues upon which there is not a completed residence. For each Lot owned by Declarant on which there is a completed residence, Declarant shall pay only that portion of dues attributable towards reserves (as described in Section 3 above) and landscape maintenance. The assessments shall be payable annually or in installments, as determined by the Board of Directors. In the event Class B Lots are occupied by persons under leases, options or installment sales contracts with Declarant, the Declarant shall be assessed at the same rate as Class A Lots, beginning at the time of occupancy.

(a) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased by the Board of Directors, effective January 1 of each year, without a vote of membership, but subject to the limitation that any such increase shall not exceed the greater of ten percent (10%) or the percentage increase in the Consumer Price Index (published by the Department of Labor, Washington, D.C.) for All Cities over the preceding twelve (12) month period.

(b) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased above the increase permitted in Section 4(a) above if such increase is approved by Members entitled to no less than two-thirds (2/3rds) of the votes appurtenant to each Class of Lots represented in person or by proxy at a meeting duly called for this purpose, written notice of which shall be sent to all Members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting setting forth the purpose of the meeting.

(c) The Board of Directors may fix the annual assessment at amounts not in excess of the maximum.

Section 5. Special Assessments. In addition to the annual assessments authorized above, the Association may levy, in any calendar year, a special assessment or assessments ("Special Assessments") for the purpose of defraying, in whole or in part, any costs incurred by the Association

which are not paid for out of funds on hand in the Association or out of the annual assessments collected by the Association. Such costs may include, but shall not be limited to, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area or in connection with exterior maintenance of improvements constructed on the Lots, including fixtures and personal property related thereto. Notwithstanding the above, all fees and costs incurred by the Association in exploring or waging a complaint or suit against Declarant must be paid for out of a Special Assessment and, for this purpose only, such Special Assessment must be approved by a vote of the Members entitled to cast no less than two-thirds (2/3rds) of all votes entitled to be cast by the Members. Any Special Assessment shall have the same assent of the Members as provided in Section 4(b) of this Article. Notwithstanding the foregoing, in no event shall Declarant be required to pay any Special Assessment on any Lot upon which there is not a completed residence, and for each Lot owned by Declarant on which there is a completed residence, Declarant shall pay only that portion of any Special Assessment attributable towards reserves and landscape maintenance.

Section 6. Notice and Quorum for any Action Authorized Under Section 4 and 5. Written notice of any meeting called for the purpose of taking any action authorized under Section 4 or 5 shall be sent to all Members no less than ten (10) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of Members and proxies entitled to cast sixty percent (60%) of the votes appurtenant to each Class of Lots (Class A and Class B) 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 7. Uniform Rate of Annual Assessment. Annual assessments shall, except as herein otherwise specifically provided for a difference in Class A and Class B Lots, be fixed at uniform rates for all Lots and shall be collected on a schedule established by the Board of Directors. Special Assessments shall be fixed by the Board of Directors and approved by the Members as set forth in Section 5 hereof.

Section 8. Date of Commencement of Annual Assessments; Due Dates. The annual assessments provided for herein shall commence as to all Lots within a building on the first day of the month following the conveyance of the first Lot in that building. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. At least thirty (30) days before January 1 of each year, the Board of Directors shall fix the amount of the annual assessment against each Lot and in the event the Board elects not to affix such assessment as herein provided, the amount of the prior year's annual assessment shall be the fixed amount. Written notice of any change in the assessment rate shall be sent to every Owner. The Board of Directors shall establish the due dates for the payment of annual and special assessments. 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 9. Effect of Non-Payment of Assessments; Remedies of the Association. Any assessment not paid within fifteen (15) days after the due date shall be assessed a late charge in the amount of Fifteen and No/100 Dollars (\$15.00) or in an amount to be determined from time to time by the Board of Directors, and the assessment with late charge may bear interest from the due date at an annual rate of twelve percent (12%) per annum. The Association, or its agent or representative, may bring an action at law against the Owner personally obligated to pay the same or foreclose the lien as provided in Section 47F-3-116 of the Act against the Lot to which the assessment related; and, in either event interest, costs and reasonable attorney's fees of any such action shall be added to the assessment to the extent allowed by law. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of such Owner's Lot.

The Association shall have the right, after notice of hearing, to levy fines for infractions of the provisions of this Declaration or rules and regulations promulgated by the Board provided that the Owner shall be notified in writing of a previous infraction in the preceding one year.

No charge may be imposed more than once for the delinquency of the same payment, provided, however, that the imposition of a late charge on any delinquent payment shall not eliminate or supersede charges imposed on prior delinquent payments. When an assessment is paid more than fifteen (15) days after the due date of the assessment, late charges shall accrue from the first day following the due date of the assessment. The Association may bring legal action against the Owner personally obligated to pay a delinquent assessment or fine and the Association may suspend the delinquent Owner's membership rights in the Association and/or right to use any of the amenities within Indigo Row Townhomes while the assessment or fine remains unpaid. In any legal action to enforce payment of any assessment or fine, the Association shall be entitled to recover interest, costs and reasonable attorneys' fees.

All payments shall be applied to first costs and attorneys' fees, then to fines, then to late charges, then to interest, then to delinquent assessments, then to an unpaid installments of the annual assessment or special assessments which are not the subject matter of suit, in the order of their coming due, and then to an unpaid installments of the annual assessment or special assessments which are the subject matter of suit, in the order of their coming due.

Section 10. Subordination of the Lien to Mortgages and Ad Valorem Taxes. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage or deed of trust on a Lot and to any ad valorem taxes on such Lot. Sale or transfer of any Lot shall not affect any assessment lien. However, the sale or transfer of any Lot which is subject to any 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 as to payments thereof which became due prior to such sale or transfer (but shall not affect the personal liability of the Owner for payment of such assessments). No such sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

Section 11. Exempt Property. All Property dedicated to, and accepted by, a local public authority and all Property, other than Lots, 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. No Lot shall be exempt from assessments.

No Owner may waive or otherwise exempt himself or herself from liability of the assessment provided herein, including, by way of illustration, but not limitation, by nonuse of Common Areas or abandonment of the Lot. No diminution or abatement of assessment or set off shall be claimed or allowed by reason of any alleged failure of the Association or Board to take some action or perform some function required to be taken or performed by the Association or Board under this Declaration or the Bylaws, or for improvements which are the responsibility of the Association, or from any action taken to comply with any law, ordinance, or with any order or directive of any municipal or other governmental authority, the obligation to pay assessments being a separate and independent covenant on the part of each Owner.

Section 12. Operating/Working Capital Fund. At the time of closing of the sale of each Lot containing a completed townhome dwelling to an individual Lot Owner, a sum equal to two month's assessment for each Lot shall be collected and transferred to the Association to be held as a Operating/Working Capital Fund. The purpose of said Fund is to insure that the Association Board will have adequate operating funds and possible cash available to meet Association expenses, and to acquire additional equipment or services deemed necessary or desirable. Amounts paid into the Fund shall not be considered advance payment of regular assessments.

Section 13. Prepaid Dues At Closing. At the initial closing of the sale of any Lot to a Lot Owner, there shall be paid an initial assessment of four (4) month's dues to the Association. This initial assessment shall not be due upon re-sale or re-conveyance of any Lot after the initial sale.

## ARTICLE VI

### MAINTENANCE, REPAIR AND REPLACEMENT

Section 1. Association's Responsibility. The Association shall maintain and keep in good repair the Common Area and all improvements located thereon. This maintenance shall include without limitation maintenance, repair and replacement of all landscaping and grass areas, streets, retaining walls, driveways, sidewalks, street lights and other improvements situated on the Common Area. The Association shall cause both sides of wooden fence to be installed by Declarant between property and adjacent community to be at all times maintained and repaired to a suitable state of repair. The Association shall maintain and keep in good repair all grass areas within the boundaries of Lots and at the discretion of the Board of Directors, the Association shall keep in good repair all landscaping installed by Declarant and/or Association within the boundaries of the Lots. The Association shall maintain and keep in good repair all paved, gravel or concrete walkways, driveways and parking areas originally installed on Lots in connection with the construction of residence buildings and shall maintain and keep in good repair the water, sewer, gas and electricity lines, including those located partially or wholly within the boundaries of a Lot. The Association shall maintain and keep in good repair all water and sewer pipes or facilities, which serve more than one (1) Lot, whether located within or without the boundary of a Lot. HOA will maintain the water lines until the point they cross into individual townhome and sewer lines to the individual cleanouts in front of each townhome. Owners shall not perform any maintenance or replacement work on any landscaping or grass areas on the front portion of their Lot, except that an Owner may plant seasonal plantings (i.e., "annuals") in the areas provided. Lot Owners shall be solely responsible for maintaining plantings within the flower boxes and urns placed in front of their Lot. All plantings shall be subject to review by the Association.

The Association shall provide exterior maintenance upon Lot improvements as follows: (i) paint, stain, repair, replace and care for all exterior building surfaces [including, without limitation: external brick, siding, roof surfaces, roof systems, gutters and downspouts; but excluding: entry doors (including garage doors) and their appurtenant hardware, and all exterior glass including windows and patio doors, all of which shall be maintained, repaired and replaced by the Lot Owner, with any replacement windows and doors being the same as originally installed by Declarant or by the Association]; and (ii) maintain and repair all fences; provided, however, the Owner, and not the Association, shall maintain any exterior improvement, including additional landscaping, made by the Owner, after such approval has been approved in writing by the Architectural Control Committee or Board of Directors.

In the event that the need for replacement, maintenance or repair is caused through the willful or negligent act of the Owner, the Owner's family, guests, or invitees, the cost of such replacement, maintenance or repairs shall be the obligation of that Owner and shall be added to and become a part of the assessment to which such Lot is subject. The Association is hereby granted a right of access to each Lot for performance of repairs or maintenance, whether the work is to be accomplished to fulfill the Association's responsibility therefor or to perform work, which is the unfulfilled obligation of the Lot Owner.

Section 2. Owner's Responsibility. Except as provided in Section 1 above, all replacement, maintenance and repair of the improvements on the Lot shall be the responsibility of the Owner thereof, including all replacement and repair necessitated by a fire or other casualty against which the Owner is required to maintain insurance under the provisions of Article IX hereof. Each Owner shall maintain, repair and replace, at his or her expense, all exterior light fixtures attached to the Owner's dwelling and all

interior portions of the improvements which shall need repair, including bathroom and kitchens fixtures, light fixtures or other electrical or plumbing equipment, pipes and fittings serving the Lot. Further, each Owner shall repair, maintain and replace, at his or her expense, the heating and air-conditioning systems servicing said Owner's dwelling, whether located on the Owners Lot or in the Common Area adjacent to the Lot. Each Owner shall be responsible for interior pest control. In addition, each Owner shall maintain, repair, replace or remove any exterior improvement, including additional landscaping, made by the Owner, after such approval has been approved in writing by the Architectural Control Committee or Board of Directors.

In the event that the Board of Directors of the Association determines (a) that an Owner has failed or refused to discharge properly the Owner's obligations with regard to the maintenance, repair or replacement of items for which the Owner is responsible hereunder; or (b) that the need for maintenance, repair or replacement, which is the responsibility of the Association hereunder, is caused through the willful or negligent act of an Owner, his or her family, guests, lessees or invitees, the Association may perform the repair, replacement or maintenance at the Owner's cost and expense with credit, however, for the proceeds from any insurance payments; provided that except in emergency situations, the Association shall give the Owner written notice of the necessity of the maintenance, repairs or replacement deemed necessary. The Owner shall have ten (10) days within which to complete such maintenance, repair or replacement or if the maintenance, repair or replacement cannot be completed within a ten (10) day period, Owner must commence such work within the ten (10) day period and complete the work within a reasonable time. If the Owner does not comply with the provisions hereof, the Association may provide the work and the cost thereof shall be added to and become a part of the assessment to which such Owner is subject and shall become a lien against the Lot.

Section 3. Management Agreement. The Association shall have the right to hire a management company to undertake any of its responsibilities set forth in the Declaration. However, any such management agreement shall be terminable by the Association, without liability, upon not more than ninety (90) days notice to the other party.

## ARTICLE VII

### PARTY WALLS

Section 1. General Rules of Law to Apply. Each wall that is built as a part of the original construction of the homes, garages or storage units upon the Property 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.

Section 2. Sharing of Repair and Maintenance. The cost of replacement, repair and maintenance of a party wall shall be equally divided by the Owners of the homes, garages and storage units which share the wall, except that (i) if the damage necessitating the replacement, repair or maintenance is covered under the terms of any fire or casualty insurance policy maintained by the Association, the proceeds of such policy shall first be used to effect such replacement, repair and maintenance; and (ii) if the portion of the wall which requires the replacement, repair or maintenance is an outside wall for one of the homes, garages or storage units, but not for the other (that is, not common to both homes, garages or storage units) the replacement, repair or maintenance cost of that portion of the wall shall be borne by the Owner of the home, garage or storage unit utilizing that portion of the wall, if, and to the extent that, the Association does not have that responsibility.

Section 3. Destruction by Fire or Other Casualty. Subject to the provisions of Section 2, above, if a party wall is destroyed or damaged by fire or other casualty or requires replacement, repair or maintenance in excess of the benefits payable under any fire or casualty insurance policy maintained by the Association, and one of the common Owners of the wall repairs, replaces or performs necessary

maintenance work, the other Owner shall promptly reimburse the Owner who effects the work in an amount equal to one-half of the cost thereof; provided that this obligation shall not be absolute but shall be subject to the general rules of law regarding negligence and wrongful acts.

Section 4. Right to Contribution Runs With Land. The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

## ARTICLE VIII

### ARCHITECTURAL CONTROL

Until the plans and specifications showing the nature, kind, shape, height, color, materials, and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Board of Directors of the Association, or by an architectural committee, if the Board of Directors shall elect to establish such a committee, composed of three (3) or more representatives appointed by the Board (said committee being hereinafter referred to as the "Architectural Control Committee"), (i) no building, fence, sign, wall, landscaping, statuary or other structure or improvement of any kind (including a paved surface) shall be commenced, erected, installed, or maintained upon any Lot or upon the Common Area; (ii) no exterior addition to or change or alteration thereto be made, including, but not limited to, color or painting of the exterior or change of the type of exterior finish, the installation of aials or awnings or the placement of reflective or other material in the windows of a dwelling, or the addition of an exterior attachment (such as a storm door); and (iii) no penetrations of the roof of a building may be made. All structures shall be of standard design employed by Declarant in the original construction of such amenities in the project. In the event the Association or its designated committee fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications and have been submitted to it, approval will not be required, and this Article shall be deemed to have been fully complied with. Provided, however, that nothing herein contained shall be construed to permit the interference with the development of the Property by the Declarant.

The installation of antennae and of satellite dishes or disks shall be permitted on a Lot if accomplished in strict compliance with the limitations and conditions imposed by the Telecommunications Act of 1996, as amended from time to time, but no antenna or disk which is in any dimension larger than prescribed by the Act or which is not installed in accordance with the advance notice requirements and location guidelines of the Act may be installed or maintained on any Lot except with the prior written approval of the Board or the Architectural Control Committee. No antenna or satellite dish may be installed in such a way that it is visible from any public street, except for Lots 27-33, where dishes may be installed on the roof; provided that they do not project above the ridgeline of the roof, are located on the alley side of the building and, in case of Lot 27, is located as far from Ansonborough Square as possible. On Lots 1-26, dishes are to be located following these same guidelines, except they shall only be placed on the roofs of the garages.

The Association shall have the authority, but not the duty, to require a "sole source" cable television provider for all Lots within the Property.

In the event an Owner of a Lot shall make an unauthorized change to the Lot, as described in the two preceding paragraphs, the Board of Directors (or the Architectural Control Committee, if any) shall have the right, through its agents and employees, to enter upon said Lot and to repair, maintain and restore its appearance, as nearly as reasonably possible, to the same as it was prior to the unauthorized change. The cost of such work and any other costs or attorney's fees incurred in the enforcement of these provisions shall be added to and become a part of the assessments to which such Lot is subject.

The provisions of this Article VIII shall not apply to improvements of any kind constructed upon any Lot or upon the Common Area by Declarant and Declarant is expressly exempt from the provisions of this Article VIII.

## ARTICLE IX

### INSURANCE

Section 1. By Owners. Each Owner shall procure and maintain, at such Owner's own cost and expense, insurance coverage as follows:

(a) Coverage:

(i) Public Liability. Each Owner shall procure and maintain such public liability insurance as, in each owner's sole discretion, is appropriate.

(ii) Contents. Each Owner shall procure and maintain insurance on the contents of the dwelling and other buildings on his or her Lot with limits no less than the replacement value of such contents.

Section 2. By Association. The Association shall procure and maintain insurance coverage as follows:

(a) Coverage.

(i) Townhomes. Insurance policies upon Townhomes shall be purchased by the Association for the benefit of the Association and the Owners and their mortgagees, as their interests may appear, and provisions shall be made for the issuance for certificates or mortgagee endorsements to the mortgagees of Owners upon request therefor by any Owner. Each townhome unit shall be insured in an amount equal to one hundred percent (100%) of its insurable replacement value as determined annually by the Association with the assistance of the insurance company providing coverage. Such coverage shall provide protection against:

(a) Loss or damage by fire and other hazards, including extended coverage, vandalism and malicious mischief, and

(b) Such other risks as from time to time shall be reasonably required by the Association.

(ii) Common Areas. All insurance policies upon the Common Area shall be purchased by the Association for the benefit of the Association and the Owners and their mortgagees, as their interests may appear, and provisions shall be made for the issuance for certificates or mortgagee endorsements to the mortgagees of Owners upon request therefor by any Owner. All buildings and insurable improvements upon the Common Areas and all personal property of the Association included in the Common Areas and facilities shall be insured in an amount equal to one hundred percent (100%) insurable replacement value as determined annually by the Association with the assistance of the insurance company providing coverage. Such coverage shall provide protection against:

(a) Loss or damage by fire and other hazards, including extended coverage, vandalism and malicious mischief, and

(b) Such other risks as the Association may from time to time elect to protect against.

(iii) Public Liability. Public liability insurance shall be secured by the Association with limits of liability of no less that One Million and No/100

(\$1,000,000.00) Dollars per occurrence and shall include an endorsement to cover liability of the Owners, as a group, to a single Owner.

(b) Premiums. Premiums for insurance policies purchased by the Association shall be paid by the Association and shall be included as part of the annual assessment described in Article V above.

(c) Proceeds. All insurance policies purchased by the Association shall be for the benefit of the Association and the Owners and their mortgagees, as their interests may appear, and shall provide that all proceeds thereof shall be payable to the Association as insurance trustee under this Declaration. The sole duty of the Association as insurance trustee shall be to receive such proceeds as are paid and to hold the same in trust for the purposes stated herein or stated in the Bylaws and for the benefit of the Owners and their mortgagees in the following shares:

(i) Proceeds on account of damage to Common Areas and facilities shall be paid to and held by the Association;

(ii) If an insured casualty shall occur on the Common Area, resulting in damage to Lots or to personal property of Owners or injury to an Owner or members of an Owner's family, proceeds from Association insurance shall be held in undivided shares for the affected Owners in proportion to the cost of repairing the damage or injuries suffered by each Owner, which cost shall be determined by the Association;

(iii) In the event a mortgagee endorsement has been issued for any Lot, the share of the Owner of that Lot shall be held in trust for the mortgagee and the other Owners, as their interests may appear.

Section 3. Distribution of Insurance Proceeds. Proceeds of insurance policies received by the Association as insurance trustee shall be distributed in the following manner:

(a) Expense of the Trust. All expenses of the insurance trustee shall be first paid or provisions made therefor.

(b) Reconstruction or Repair. The remaining proceeds shall be paid to defray the cost of repairs to the Common Area. Any proceeds remaining after defraying such cost shall be distributed to the affected Owners as provided in Section 2(c)(ii) of this Article.

Section 4. Fidelity Insurance or Bond. All persons responsible for or authorized to expend funds or otherwise execute control over the assets of the Association or those held in trust, shall first be bonded by a fidelity insurer to indemnify the Association for any loss or default in the performance of their duties in an amount equal to six (6) months' assessments, plus reserves accumulated at the time of the bonding.

## ARTICLE X

### USE RESTRICTIONS

Section 1. Use Restrictions and Rules and Regulations. Use and enjoyment of the Property shall be subject to the easements, restrictions, covenants and conditions, charges and liens set forth in this Declaration. In addition, the use and enjoyment of the Property shall be further governed and regulated by rules and regulations promulgated or adopted by the Board of Directors of the Association, as amended or supplemented from time to time by the Board. The Board of Directors of the Association shall have the power to formulate, amend, publish and enforce rules and regulations, as amended or supplemented from time to time, and may provide for imposition of fines and other penalties for the violation of any such rules and regulations or for the violation of any of the restrictions, covenants and conditions contained in this Declaration.

Section 2. Residential Use. Except as may be otherwise expressly provided in this Declaration, each Lot shall be used for residential purposes only. Lease or rental of a townhouse for residential purposes shall not be considered to be a violation of this Covenant, so long as the lease is in compliance with the provisions of this Declaration, the Bylaws and reasonable Rules and Regulations adopted by the Board.

Section 3. Prohibition of Renting for Transient or Hotel Purposes. No Owner shall rent his Lot for transient or hotel purposes, which, for the purposes of this Declaration shall be defined as either a rental for any period less than one hundred eighty (180) days or any rental if the lessee of the Lot is provided customary hotel services. Each permitted lease shall be in writing and shall be subject to this Declaration, the Bylaws, and the Rules and Regulations adopted hereunder and any failure of the lessee to comply with the terms of such documents shall be a default under the lease. Other than the foregoing restrictions, each Owner shall have the full right to lease all or any portion of his Lot.

Section 4. Antennas/Satellite Dishes. As provided in Article VIII, except for such as are covered by, and installed in strict compliance with, the requirements of the Telecommunications Act of 1996, as amended, no outside radio or transmission tower or receiving antenna, including a satellite dish antenna, and no outdoor television antenna or satellite dish may be erected or installed by an Owner or permitted by an Owner to remain on his or her Lot without the prior written approval of the Board of Directors or the Architectural Control Committee, if any.

Section 5. Quiet Enjoyment. No obnoxious or offensive activity shall be carried on upon the Property, nor shall anything be done which may be or may become a nuisance or annoyance to the neighborhood.

Section 6. Dwelling Size. The total square footage of the main structure located on a Lot, exclusive of one-story open porches and garages, shall not be less than 1,750 square feet.

Section 7. Nuisances. No activity deemed noxious or offensive by the Board of Directors or the Architectural Control Committee, if any, shall be carried on upon any Lot or within the Common Area, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood as determined by said Board or Committee. Examples of such offensive activities shall include, but not be limited to, the origination or emission of any loud or disturbing noise or vibrations, failure of townhome occupants to insure that garage doors are closed at all times except when automotive traffic is moving in or out; 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, appliances, interior furniture, or other miscellaneous items) on porches, patios, terraces or yards; and similar unsightly activity (such as use of outdoor clothes drying lines) not in keeping with the aesthetic character and high level of appearance of the community.

No potentially hazardous or toxic materials or substances shall be used or stored on any Lot other than normal household, lawn and garden products which shall be used by Owner in a manner that will not permit spills or runoff of such materials anywhere within the Property. No activity shall be allowed which violates local, state or federal laws or regulations and the Board shall have the right, but not the obligation, to take enforcement action in the event of a violation.

Section 8. Animals. No animals, livestock, or poultry 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 or maintained provided that they are not kept or maintained for commercial purposes. The number of household pets generally considered to be outdoor pets, such as dogs and cats, shall not exceed two (2) in number, except for newborn offspring of such household pets, which are under six (6) months in age. Notwithstanding the foregoing, Pit Bulls, Rottweilers and Dobermans are expressly prohibited, and the Association shall have the right to prohibit, or require the removal of, any dog or other animal which the Association, in its sole discretion, deems to be undesirable, a nuisance or a safety hazard after

consideration of factors such as size, breed and disposition of the animal, likely interference by the animal with the peaceful enjoyment of the Property by Owners and the security measures taken by the Owner with respect to such animal. Owners shall be responsible for the removal of animal waste from the Lot and Common Areas. Animals shall not be kept unattended and shall not be tied outside a townhome. No kennels, dog runs or animal holding pen of any type shall be allowed on a Lot or on the Common Area.

Section 9. Temporary Structures and Parking of Vehicles Onstreet and Offstreet. No residence or other improvement of a temporary nature shall be erected or allowed to remain on any Lot, and no trailer, basement, shack, tent, garage, barn or any other building of a similar nature shall be used as a residence on any Lot, either temporarily or permanently. No mobile house trailers, on or off wheels, recreational vehicles ("RVs"), motor homes, vehicles or enclosed bodies of the type which may be placed on or attached to a vehicle, known generally as "campers", commercial vehicles of any kind or boats or boat trailers shall be permitted, parked or stored in the Common Area or within any Lot, unless inside the garage of that Lot with the garage door closed; provided that the temporary parking of commercial vehicles will be permitted while the driver thereof is on business delivering goods or services to a customer within the Property.

No vehicle of any type which is abandoned or inoperative shall be stored, parked or kept in the Common Area nor shall any such vehicle be stored, parked or kept on any Lot if it can be seen from any other Lot or from any street within the Property, and no automobiles or other mechanical equipment may be dismantled or parts thereof stored on any said Lot. No vehicles of any type shall be parked on the sidewalk or within a street right-of-way, nor shall vehicles of any type be parked or stored on any part of a Lot not improved for that purpose (a garage, driveway or parking pad). This prohibition shall not preclude occasional, overnight or temporary daytime overflow parking within the street right-of-way by Owner, guests of an Owner, or tenant of an Owner, as long as no inconvenience is imposed upon one or more Owners of other Lot(s).

The provisions of this Section 9. shall not preclude the parking of construction trailers within the Property or the construction, maintenance and use by Declarant of temporary buildings and other structures while there are new townhome construction and/or sales activities within the Property. Daytime and overnight parking of trucks and other construction vehicles shall also be permitted throughout the Lot development and townhome construction periods.

The Association may, from time to time, adopt such reasonable parking rules and regulations as it deems appropriate to promote the safe and orderly use of parking areas within the Property.

Section 10. Signs. No signs or other advertising devices shall be erected upon or displayed or otherwise exposed to view on any Lot, or any improvement thereon, without the prior written consent of the Association, except that "For Sale" and "For Rent" signs not exceeding 18" x 35" may be placed in the window of a townhouse unit and provided, further, that Declarant may post temporary "For Sale" and other advertising signs anywhere on the Property until such time as all Lots owned by Declarant have been sold and conveyed.

Section 11. Street Lamps. The street lamps installed in the Common Areas at or near the roads upon which Lots face shall be maintained, repaired and replaced at the expense of the Association and the Association shall pay the electricity bills. No Owner may or shall disconnect a streetlight or remove any element thereof or in any way damage or deface a streetlight.

Section 12. Control of Dogs. Every person owning or having possession, charge, care, custody or control of a dog shall keep such dog exclusively upon his or her Lot; provided, that such dog may be off premises if it is under the control of a competent person and restrained by a chain, leash or other means of adequate physical control.

Section 13. Garbage and Refuse Disposal. No Lot shall be used in whole or in part for storage of rubbish of any character whatsoever and no trash, rubbish, stored materials, wrecked or

inoperable vehicles or similar unsightly items shall be allowed to remain on any Lot outside an enclosed structure; provided however, that the foregoing shall not be construed to prohibit temporary deposits of trash, rubbish and other debris for collections by governmental or other similar garbage and trash removal units. In addition, all trash, garbage and other waste shall be stored in sanitary containers in the space provided in the garage or in the fenced area on each lot designated for sanitary container storage, and in accordance with the rules and regulations of the Association and of any health or public safety authority having jurisdiction over the Property. Rollout garbage containers shall be rolled out to the street in rear of the townhouse in the evening before the regularly scheduled pickup and rolled back into the garage by 10:00 p.m. the day of the pickup.

Section 14. Garages. Garages are included in the required number of parking spaces and shall not be converted into living space or into a storage room without area for a motor vehicle. Garage doors must be kept closed at all times, except as needed to enter and exit the garage.

Section 15. Holiday Decorations. Decorations for holidays shall not be displayed for more than forty-five (45) days prior to and after any such holiday.

## ARTICLE XI

### EASEMENTS

Section 1. General. All of the Property, including Lots and Common Areas, shall be subject to such easements for driveways, walkways, parking areas, water lines, sanitary sewer lines, storm drainage facilities, gas lines, telephone lines, electric power lines and other public utilities as shall be established by the Declarant, and Declarant, prior to conveying the Common Area to the Association, and the Association, after conveyance of the Common Area to the Association, shall have the power and authority to grant and establish upon, over, under, and across the Common Areas such further easements as are in the opinion of either of them, requisite for the convenient use, development and enjoyment of the Property. In addition, there is hereby reserved in the Declarant and its agents and employees an easement and right of ingress, egress, and regress across all Common Areas now or hereafter owned by the Association, for the purpose of development of the Property and construction of improvements within the Property. Each Lot and the Common Area shall be and is subject to an easement for building encroachments created by initial construction and by subsequent settling and overhangs. A valid easement for said encroachments and for maintenance of same shall continue so long as said encroachments exist. In the event a multi-family building covering parts of two or more Lots is partially or totally destroyed, and then rebuilt, minor encroachments over parts of the adjacent Lots or Common Area resulting from the reconstruction shall also be permitted and a valid easement for said encroachments and the maintenance thereof shall continue.

Section 2. Construction. Declarant hereby reserves a construction easement over the Property for the purposes reasonably related to installation of streets and utilities and construction of dwellings on the Lots and improvements on the Common Areas, and Declarant and its contractors shall have full rights of ingress and egress to and through, over and about the Property during such period of time that Declarant is engaged in any construction or improvement work on or within the Property and shall further have an easement for the purpose of storing the materials, vehicles, tools, equipment, etc., which are being utilized in such construction. No Owner, nor his/her guests or invitees, shall in any way interfere or hamper Declarant or its employees or contractors in the exercise of these rights and easements.

Section 3. Emergency. There is hereby reserved, without further assent or permit, and to the extent permitted or required by law, a general easement exercisable by all firemen, ambulance personnel, policemen and similar persons to enter upon any portion of the Property in the performance of

their respective duties. The Association and its agents shall also have the right to enter the Lots and any improvements located thereon for the purpose of making emergency repairs or replacements.

Section 4. Ingress and Egress. Declarant reserves and hereby dedicates easements for pedestrian and vehicular ingress and egress over the streets and sidewalks of the Property and easements for pedestrian traffic over and along the Common Areas within the Property, which easements may and shall be freely enjoyed by all Owners, and by their families and invitees, so long as such use and enjoyment is not in violation of law, of the Use Restrictions set out in Article X or of any rules and regulations promulgated by the Board of Directors.

## ARTICLE XII

### INDEMNIFICATION OF DIRECTORS AND OFFICERS

Neither Declarant, nor any member of Declarant, nor any Member, nor the Board (individually or collectively), nor the Association, nor any officers, directors, agents or employees of any of them, shall be personally liable for debts contracted for, or otherwise incurred by, the Association or for a tort of Member, whether such Member was acting on behalf of the Association or otherwise. Neither Declarant, nor the Association, nor their directors, officers, agents, members or employees, shall be liable for any incidental or consequential damages for failure to inspect the Lots, the Common Areas or any other portion of the Property, or any improvements thereon, or for failure to repair or maintain the same. Neither Declarant, the Association nor any other person, firm or association making such repairs or maintenance shall be liable for any personal injury or other incidental or consequential damages occasioned by any act or omission in the repair or maintenance of any Property or improvements.

The Association shall, to the extent permitted by applicable law, indemnify, defend and save harmless all members of the Board from and against any and all loss, cost, expense, damage, liability, claim, action or cause of action arising from or relating to the performance by the Board of its duties and obligations, except for any such loss, cost, expense, damage, liability, claim, action or cause of action resulting from the gross negligence or willful misconduct of the person(s) to be indemnified.

The Association shall indemnify every director, officer, former director and former officer of the Association and any person who may have served at the request of the Association as a director or officer of another corporation, whether for profit or not-for-profit, against expenses (including attorneys' fees) and liabilities actually and reasonably incurred by him or her in connection with the defense of, or as a consequence of any threatened, pending or completed action, suit or proceeding (whether civil or criminal) in which he or she is made a party or was (or is threatened to be made) a party by reason of being, or having been, such director or officer, except in relation to matters as to which he shall be adjudged in such action, suit or proceeding to be liable for gross negligence or willful misconduct in the performance of a duty.

The indemnifications provided herein shall not be deemed exclusive of any other rights to which those indemnified may be entitled under any statute, by-law, agreement, vote of members or of disinterested directors, or otherwise, and shall continue as to a person who has ceased to be a director, officer, employee or agent and shall inure to the benefit of the heirs, executors and administrators of such a person.

The Association shall undertake to purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the Association, or is or was serving at the request of the Association as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against any liability asserted against him or her and incurred by him or her in such capacity, or arising out of his or her status as such, whether or not the Association would have the power to indemnify him or her against such liability.

The Association's indemnity of any person who is or was a director, officer, employee or agent of the Association, or is or was serving at the request of the Association as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, shall be reduced by any amounts such person may collect as indemnification (i) under any policy of insurance purchased and maintained on his or her behalf by the Association or (ii) from such other corporation, partnership, joint venture, trust or other enterprise.

Nothing contained in this Article XII, or in the by-laws, shall operate to indemnify any director or officer if such indemnification is for any reason contrary to any applicable state or federal law.

## ARTICLE XIII

### GENERAL PROVISIONS

Section 1. Enforcement. The Association, and each Owner, shall have the right to enforce, by proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens, and charges now or hereafter imposed by the provisions for this Declaration. Failure by the Association 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.

Section 2. Severability. Invalidity of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions, which shall remain in full force and effect.

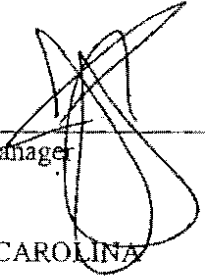
Section 3. Amendment and Termination. The covenants and restrictions of this Declaration shall run with and bind the land for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years unless abrogated by a written termination agreement signed by seventy-five (75) percent of the Members and filed in the Register of Deeds of Mecklenburg County within sixty (60) days prior to the beginning of a ten (10) year extension period. This Declaration may also be amended by an instrument signed by the Owners entitled to not less than sixty-seven (67) percent of the votes eligible to be cast at the time of the amendment. Any such amendment shall not be effective until such amendment has been filed for record in the Mecklenburg County Public Registry.

Section 4. Rights of Note holders. Any institutional holder of a first mortgage on a Lot will, upon written request therefor (acknowledged by the Association), be entitled to (a) inspect the books and records of the Association during normal business hours, (b) receive an annual financial statement of the Association within ninety (90) days following the end of its fiscal year, (c) receive written notice of all meetings of the Association and the right to designate a representative to attend all such meetings, (d) receive written notice of any condemnation or casualty loss that affects either a material portion of the Property or the Lot securing its mortgage, (e) receive written notice of any sixty (60) day delinquency in the payment of dues, assessments or charges owed by the Owner of the Lot on which it holds the mortgage, (f) receive written notice of a lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association, (g) receive written notice of any proposed action that requires the consent of a specified percentage of mortgage holders, and (h) be furnished with a copy of the master insurance policy.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has hereunto caused these presents to be executed as of the day and year first above written.

MS ELM TOWNS, LLC

By: \_\_\_\_\_  
Joseph T. Roy, IV, Manager



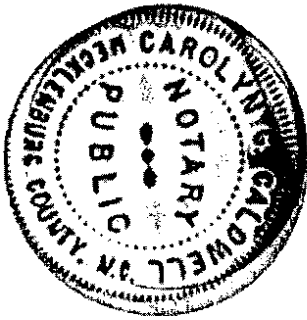
STATE OF NORTH CAROLINA  
COUNTY OF MECKLENBURG

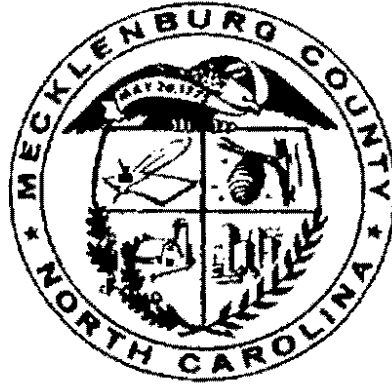
I, a Notary Public of the County and State aforesaid, certify that Joseph T. Roy, IV, the Manager of MS ELM TOWNS, LLC, a North Carolina limited liability company, and that by authority duly given and as the act of the company, he signed the foregoing instrument in its name on its behalf as its act and deed. Witness my hand and official stamp or seal, this 19<sup>th</sup> day of December, 2005.

*Carolyn G. Caldwell*  
\_\_\_\_\_

Notary Public

My commission expires: ~~XXXXXX~~ 11-11-09





JUDITH A. GIBSON  
REGISTER OF DEEDS, MECKLENBURG  
COUNTY & COURTS OFFICE BUILDING  
720 EAST FOURTH STREET  
CHARLOTTE, NC 28202

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Document No.: 2006009533  
RESTR 20 PGS \$68.00  
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| NORTH A. GIBSON, REGISTER OF DEEDS<br>MECKLENBURG COUNTY, NC |           |

Drawn by and mail to:  
 R. Dale Fussell, Attorney At Law  
 447 South Sharon Amity Road, Suite 140  
 Charlotte, NC 28211-2836

STATE OF NORTH CAROLINA  
 COUNTY OF MECKLENBURG

SUPPLEMENTAL DECLARATIONS  
 OF COVENANTS, CONDITIONS AND  
 RESTRICTIONS FOR MEETING STREET  
 AT INDIGO ROW

THIS SUPPLEMENTAL DECLARATION is made this 6th day  
 of April, 2006, by MS ELM TOWNS, LLC, a North Carolina  
 limited liability company (hereinafter referred to as the "Declarant").

WITNESSETH:

WHEREAS, Declarant executed "Declaration Of Covenants, Conditions, And Restrictions For Meeting Street Towns At Indigo Row" recorded in Book 19902 Page 467 Mecklenburg County, North Carolina, Public Registry. Declarant is the owner of all of the real property in Mecklenburg County, North Carolina, shown on Map Book 44 Page 321. The Declarations in Book 19902 Page 467 allow, in Article XIII therein, for amendments to said Declarations by vote of not less than 67% of the votes of Owners entitled to vote. Declarant owns all of the Lots shown on said map that are subject to these Declarations except Lot 28, which has been conveyed to William Teberg and wife, Jill Teberg. Therefore, Declarant has full authority to make amendments to said Declarations.

NOW, THEREFORE, Declarant hereby makes the following amendments to the Declarations recorded in Book 19902 Page 467 Mecklenburg County, North Carolina, Public Registry:

1. Lots 27-44 inclusive on Map Book 44 Page 321 show a 40 foot rear yard setback through a portion of said lots. Declarant hereby declares that any garages constructed in violation of said 40 foot rear yard setback are not violations under the Declarations. Declarant intends to construct townhomes with detached garages on all of these lots and intends that said garages and any structures, equipment or other items attached thereto or appurtenant thereto shall not be considered violations of the 40 foot rear yard setback as shown on Map Book 44 Page 321.

2. Declarant hereby adds a new provision to said Declarations to provide that the approval of not less than seventy-five percent (75%) of the Owners of Lots entitled to vote on matters related to said Declarations shall be required prior to the homeowners association (Meeting Street At Indigo Row Owners Association, Inc. and/or its successor/assigns) and/or any of its Directors filing a lawsuit or other legal action as to any and all matters against Declarant and/or any of Declarant's subsidiary/affiliate companies.

3. Article VIII paragraph 2 contains a reference to an exception for Lots 27-33 relative to satellite dishes and a reference to the position of satellite dishes on Lots 1-26 on Ansonborough Square. These references are hereby deleted such that all lots are subject to the same restrictions as to satellite dishes.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has hereunto set its hand and seal, the day and year first above written.

MS Elm Towns, LLC

BY: \_\_\_\_\_  
Joseph T. Roy, IV  
Manager/Member

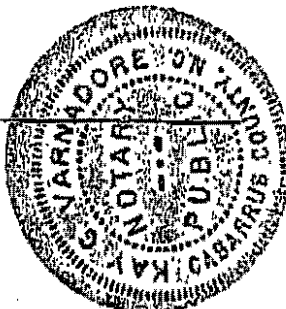
STATE OF NORTH CAROLINA

COUNTY OF MECKLENBURG

I, Kay G. Varnadore, a Notary Public in and for said County and State do hereby certify that JOSEPH T. ROY, IV personally appeared before me this day and acknowledged that he is Member/Manager of MS ELM TOWNS, LLC, a North Carolina limited liability company, and that by authority duly given and as the act of said company, he signed the foregoing instrument in its name on its behalf as its act and deed.

WITNESS my hand and official seal, this 6th day of April, 2006.

Kay G. Varnadore  
Notary Public Kay G. Varnadore  
My commission expires: 2-7-2008



**EXHIBIT "A"**

**Townhome Pads 45-74 Final Townhome Plat Of Eastfield At Prosperity Village,  
Map 5, Map Book 41 Page 725**

~~4~~ 3



For Registration Fredrick Smith  
Register of Deeds  
Mecklenburg County, NC  
Electronically Recorded  
2016 Dec 29 09:56 AM RE Excise Tax: \$ 0.00  
Book: 31462 Page: 468 Fee: \$ 26.00  
Instrument Number: 2016177593

*Fredrick Smith*

Prepared by and return to: Sellers, Ayers, Dortch & Lyons, P.A. (Box 91)  
310 South McDowell Street, Suite 410  
Charlotte, N.C. 28204

**CERTIFICATION OF AMENDMENT TO  
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
OF  
MEETING STREET AT INDIGO ROW**

This **CERTIFICATION OF AMENDMENT TO THE DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF MEETING STREET AT INDIGO ROW** is made pursuant to Article XIII, Section 3 of the DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR MEETING STREET AT INDIGO ROW, recorded in Book 19902 at Page 67 of the Mecklenburg County Public Registry on January 18, 2006, as amended and supplemented by instruments recorded thereafter ("Declaration"), and is effective upon recordation in the Mecklenburg County Public Registry.

Statement of Purpose

NCGS §47F-2-117 and Article XIII, Section 3 of the Declaration provide that the Declaration may be amended by affirmative vote or written agreement signed by Lot Owners to which at least sixty-seven percent (67%) of the votes eligible to be cast at the time of the amendment. In accordance with the requirements of the statute and the Declaration, as well as NCGS §55A-7-08 the following Amendments were approved by the affirmative vote of the required percentage of the Owners. Accordingly, the due and proper adoption of following Amendments is hereby certified by the President of the Association for recordation.

**NOW, THEREFORE**, with the affirmative vote of Lot Owners of Lots to which at least sixty-seven percent (67%) of the votes in the Association are allocated, the Declaration of Covenants, Conditions and Restrictions for Meeting Street at Indigo Row is amended as follows:

1. **Amendments to make Owners responsible for Fence Maintenance.**

a. The second paragraph of Article VI, Section 1 is deleted in its entirety and the following is substituted in lieu thereof:

The Association shall provide exterior maintenance upon Lot improvements as follows: paint, stain, repair, replace and care for all exterior building surfaces [including, without limitation: external brick, siding, roof surfaces, roof systems, gutters and downspouts; but excluding: entry doors (including garage doors) and their appurtenant hardware, and all exterior glass including windows and

patio doors, all of which shall be maintained and repaired and replaced by the Lot Owner, with any replacement windows and doors being the same as originally installed by the Declarant or by the Association]. Notwithstanding the foregoing, the Owner, and not the Association, shall maintain any exterior improvement, including additional landscaping, made by the Owner, after such improvement has been approved in writing by the Architectural Control Committee or the Board of Directors.

- b. The first paragraph of Article VI, Section 2 is deleted in its entirety and the following is substituted in lieu thereof:

**Section 2 Owner's Responsibility.** Except to the extent replacement, maintenance and repair responsibilities are expressly assigned to the Association in Section 1 above, all replacement, maintenance and repair of the improvements on the Lot shall be the responsibility of the Owner thereof, including all restoration, replacement and repair necessitated by a fire or other casualty against which the Association and/or the Owner is required to maintain insurance under the provisions of Article IX hereof. Without limiting the generality of the foregoing, each Owner shall maintain, repair and replace, at his or her expense, all fences located on the Owner's Lot as well as all exterior light fixtures attached to the Owner's dwelling and all interior portions of the improvements which shall need repair, including bathroom and kitchen fixtures, light fixtures or other electrical or plumbing equipment, pipes and fittings serving the Lot. Further, each Owner shall repair, maintain and replace, at his or her expense, the heating and air-conditioning systems servicing said Owner's dwelling whether located on the Owner's Lot or in the Common Area adjacent to the Lot. Each owner shall also be responsible for interior pest control. In addition, each Owner shall maintain, repair, replace or remove any exterior improvement, including additional landscaping, made by the Owner, after such improvement has been approved in writing by the Architectural Control Committee or the Board of Directors.

2. **Amendments to Article IX Regarding Insurance**

The following amendments to Article IX are recommended to allow for a reasonable deductible in connection with the Association's property insurance and to allocate responsibility for the payment of that deductible in connection with covered losses.

- a. Article IX, Section 1(a) is amended to added a new section (iii) providing as follows:

(iii) **Property Insurance on Lot Improvements.** Each Owner shall procure and maintain property insurance on the Townhome and other improvements located on the Owner's Lot with limits not less than \$10,000.00 and with a deductible not to exceed \$100.00. Such insurance coverage shall provide protection against loss or damage by fire and other hazards, including extended coverage, vandalism and malicious mischief as well as such other risk as from time to time shall be reasonably required by the Association.

- b. By adding a new subsection (b) to Section 1 of Article IX, providing as follows:

(b) **Verification of Required Coverage.** Each Owner shall provide the Association with verification that the Owner has obtained and is maintaining the insurance coverage required under this Section, including, without limitation, a Certificate of Insurance, when requested by the Association.

- c. Section 2(a)(i) is amended to add the following paragraph:

Insurance policies upon the Townhomes may provide deductible not to exceed \$10,000.00. All damage, costs and expenses which are not paid as a result of the application of any deductible shall be the responsibility of the affected Owner or Owners.

- d. Section 2(a)(ii) is amended to add the following paragraph:

Insurance policies upon the Common Area may provide deductible not to exceed \$10,000.00. All damage, costs and expenses which are not paid as a result of the application of any deductible shall be the responsibility of the Association.

- e. Section 2(c) of Article IX is deleted in its entirety and the following is substituted in lieu thereof:

(c) Proceeds. All insurance policies purchased by the Association as provided in Subsection (a) above shall be for the benefit of the Association and the Owners and their mortgagees, as their interest may appear, and shall provide that all proceeds thereof shall be payable to the Association as insurance trustee under this Declaration. The sole duty of the Association as insurance trustee shall be to receive such proceeds as are paid and to hold the same in trust for the purposes stated herein or stated in the Bylaws and for the benefit of the Owners and their mortgagees and the following shares:

(i) Proceeds on account of damage to the Common Areas and Facilities shall be paid to and held by the Association;

(ii) Proceeds on account of damage to the Townhomes or improvements located on Lots shall be paid to and held by the Association in undivided shares for the affected Owners in proportion to the cost of repairing the damage suffered by each Owner, which cost shall be determined by the Board of Directors of the Association;

(iii) In the event a mortgage endorsement has been issued for any Lot, the share of the Owner of that Lot shall be held in trust for the mortgagee and the other Owners, as their interests may appear.

- f. Section 3 of Article IX is deleted in its entirety and the following substituted in lieu thereof:

Section 3. Distribution of Insurance Proceeds. Proceeds received by the Association from the insurance policies maintained by the Association under Subsection (a)(i) and (ii) above shall be distributed in the following manner:

(a) Expenses of the Trust. All expenses of the insurance trustee shall be first paid or provisions made therefore.

(b) Reconstruction or Repair. The remaining proceeds shall be paid to the Association and/or to the affected Owners to defray the cost of repairs to the Common Area or to the Townhomes and other improvements located on the affected Lot or Lots as the Board of Directors of the Association, acting in its sole discretion, deems reasonable and appropriate based on the damage done to the Common Area and/or the Townhomes and other improvements located on the Lot or Lots affected. To the extent proceeds are reduced by the application of any deductible, the responsibility for payment of the deductible amount shall be allocated between the Association and the affected Owner or Owners as the Board of Directors of the Association in its sole discretion deems reasonable and appropriate.

**IN WITNESS WHEREOF** the undersigned President of the Meeting Street at Indigo Row Owners Association, Inc., certifies the proper adoption of these amendments, certifies that approval of these amendments was obtained as required by the Declaration and in accordance with North Carolina law and that this amendment to the Declaration have been duly adopted to be effective upon recordation.

**MEETING STREET AT INDIGO ROW OWNERS ASSOCIATION, INC.**

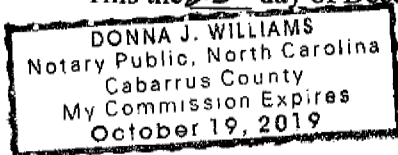
By: Kathy DeLoche  
Kathy DeLoche, President

State of North Carolina

County of Mecklenburg

I, a notary public for the County and State aforesaid, certify that **Kathy DeLoche**, being first duly sworn, appeared before me this day and certifies that she is the **President** of **MEETING STREET AT INDIGO ROW OWNERS ASSOCIATION, INC.** and that upon authority duly given and as the act of the association certifies the due adoption and execution of the forgoing instrument.

This the 23<sup>rd</sup> day of December, 2016



Donna J. Williams  
Notary Public

Seal or Stamp:

My Commission Expires: 10-19-19