

FOR REGISTRATION JUDITH A GIBSON  
REGISTER OF DEEDS  
MECKLENBURG COUNTY, NC  
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**DECLARATION OF**

**COVENANTS, CONDITIONS AND RESTRICTIONS**

**FOR**

**SKYBROOK TOWNHOMES**

Drawn by and Mailed to: Pace Development Group, Inc.  
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Charlotte, N.C. 28210

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# DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

For

## SKYBROOK TOWNHOMES

THIS DECLARATION is made this 31<sup>st</sup> day of May, 2002, by MVC-  
PACE, LLC, a North Carolina limited liability company (hereinafter referred to as the  
"Declarant").

### WITNESSETH:

WHEREAS, the Declarant is the owner of the real property in Mecklenburg  
County, North Carolina, shown on recorded maps of SKYBROOK TOWNHOMES,  
which is more particularly described in Article I below, and desires to create thereon an  
exclusive residential community of single-family attached residential units to be named  
SKYBROOK TOWNHOMES; and

WHEREAS, the SKYBROOK TOWNHOMES comprise a portion of a Master  
Planned Community now known as SKYBROOK, which is subject to those certain  
Master Declarations of Covenants, Conditions and Restrictions of Skybrook, recorded in  
Deed Book 10530, Page 272, and re-recorded in Deed Book 10885, Page 412, in the  
Mecklenburg County Public Registry (the "Master Declaration"), the SKYBROOK  
TOWNHOMES having been subjected to the Master Declaration pursuant to that  
certain Supplementary Declaration of Covenants, Conditions and Restrictions of  
Skybrook recorded in Book 13611, Page 319 in the Mecklenburg County Public  
Registry (the "Supplementary Declaration") annexing the Skybrook Townhomes into  
Skybrook; and

WHEREAS, the 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 properties within the community and to provide  
for the maintenance and upkeep of the exterior of all residential units and the Skybrook  
Townhomes Common Area, as hereinafter defined; and to this end, desires to subject  
the real property as hereinafter described to the coverage of 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, the Declarant has deemed it desirable, for the efficient preservation,  
protection and enhancement of the values and amenities in the community and to  
provide for the maintenance and upkeep of the exterior of all residential units and the  
Skybrook Townhomes Common Area, to create an organization to which will be  
delegated and assigned the powers of owning, maintaining and administering the  
Skybrook Townhomes Common Area and the exterior of the residential units and  
administering and enforcing this Declaration of Covenants, Conditions and Restrictions  
and collecting and disbursing the assessments and charges hereinafter created; and

WHEREAS, the Declarant has incorporated or will incorporate under North Carolina law, SKYBROOK TOWNHOMES COMMUNITY ASSOCIATION, INC. as a nonprofit corporation for the purpose of exercising and performing the aforesaid functions.

NOW, THEREFORE, the Declarant hereby declares that all of the properties described in Article I, Section One below, and such additions thereto as may be hereafter made pursuant to Article I, Section Two hereof, 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 having any right, title or interest in the described properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

## ARTICLE I

### PROPERTIES SUBJECT TO THIS DECLARATION

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

Being all of the property shown on the map recorded in Map Book 37 at page 197 of the County Public Registry.

Section Two. Additions to Existing Property. Additional land may be brought within the scheme of this Declaration in the following manner:

(a) Additional land within the area adjoining the property described in Section One (including without limitation all land conveyed to Declarant by deed recorded in Book 12554 at Page 48 of the County Public Registry) above may be annexed to the existing property by Declarant in future stages or development, without the consent of any other Lot owner or owners or any mortgagee, provided that said annexations must occur within fifteen (15) years after the date of this instrument. Nothing in this Declaration shall obligate Declarant to subject any of such additional land, whether currently owned by Declarant or hereafter acquired, to this Declaration, and any such additional land may be developed by Declarant as a separate project.

(b) The additions authorized under Subsection (a) above shall be made by filing for record in the County Registry a Supplement to Declaration of Covenants, Conditions and Restrictions with respect to the additional properties, which shall extend the scheme of this Declaration

to such properties and thereby subject such additions to the benefits, agreements, restrictions and obligations set forth herein.

## ARTICLE II

### DEFINITION

Section One. "Skybrook Townhomes Association" shall mean and refer to SKYBROOK TOWNHOMES COMMUNITY ASSOCIATION, INC., its successors and assigns.

Section Two. "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, including contract sellers, but excluding those having any interest merely as security for the performance of an obligation.

Section Three. "Properties" shall mean and refer to that certain real property described in Article I, Section One hereof, and such additions thereto as may hereafter be subjected to this Declaration and brought within the jurisdiction of the Skybrook Townhomes Association pursuant to Article I, Section Two above.

Section Four. "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map of the Properties, with the exception of the Skybrook Townhomes Common Area, and shall include all improvements thereon. It is currently contemplated that the Lots will be shown on subdivision maps initially recorded showing their approximate boundaries, and that Declarant or Builder will file subsequent subdivision maps showing the final and exact dimensions of the Lots reflecting the as-built locations of the townhome dwellings located thereon. Anything set forth in this Declaration to the contrary notwithstanding, Declarant or Builder may file such as-built subdivision maps, and the final configurations of the Lots shall be as shown on any such as-built subdivision maps that are recorded in the County Public Registry.

Section Five. "Declarant" shall mean and refer to MVC-PACE, LLC, its successors and assigns, if such successors or assigns should acquire all of the Declarant's interest in the Properties.

Section Six. "Skybrook Townhomes Common Area" shall mean all real property owned by the Skybrook Townhomes Association for the common use and enjoyment of the Owners. Skybrook Townhomes Common Areas, with respect to the property subject to this Declaration, shall be shown on the various plats of SKYBROOK TOWNHOMES recorded or to be recorded in the County Public Registry and designated thereon as "Common Areas," "Common Open Space," "COS," or similar designation, but shall exclude all Lots as hereinafter defined and all public streets shown thereon. "Skybrook Townhomes Common Area" shall include the private streets shown on said plats (if any) as now recorded or shall be hereinafter recorded in the County Public Registry.

The Skybrook Townhomes Common Area to be owned by the Skybrook Townhomes Association is shown as "COS" on the plat recorded in Map Book 37 at page 197 of the County Public Registry, and will be shown with similar designations on the plat(s) of the properties to be recorded hereafter in the County Public Registry.

Section Seven. "Board of Directors" shall mean and refer to the Board of Directors of the Skybrook Townhomes Association.

Section Eight. "Member" shall mean and refer to an Owner who holds membership in the Skybrook Townhomes Association pursuant to Article IV of this Declaration.

Section Nine. "County Public Registry" shall mean and refer to the office of the Register of Deeds of Mecklenburg County, North Carolina.

Section Ten. "Mortgage" shall mean any mortgage or deed of trust constituting a first lien on a Lot.

Section Eleven. "Mortgagee" shall mean the owner and holder of a Mortgage at the time such term is being applied.

Section Twelve. "Builder" shall mean an Owner acquiring an undeveloped Lot for the purpose of constructing a townhome dwelling thereon for sale third parties.

Section Thirteen. "Voting Power" shall mean the aggregate total of all votes in the Skybrook Townhomes Association, taking account of any weighted vote of the Class B Member.

Section Fourteen. "Master Association" shall mean Skybrook Homeowners Association, Inc., the homeowners association established with respect to the Master Declaration.

### ARTICLE III

#### PROPERTY RIGHTS

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

- (a) The right of the Skybrook Townhomes Association to charge reasonable admission and other fees for the use of any recreational facility situated upon the Skybrook Townhomes Common Area;
- (b) The right of the Skybrook Townhomes Association to suspend the voting rights and right of use of the recreational facilities by an Owner:
  - (1) during any period for which the Owner is delinquent in the payment

of assessments and (2) for a period not to exceed sixty (60) days for any infraction of its published rules and regulations;

(c) The right of the Skybrook Townhomes Association to dedicate or transfer all or any part of the Skybrook Townhomes Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed by the Members.

No such dedication or transfer shall be effective unless an instrument signed by two-thirds (2/3) of each class of Members agreeing to such dedication or transfer has been recorded;

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

(e) The right of the Skybrook Townhomes Association, in accordance with its Articles and Bylaws, to borrow money for the purpose of improving the Skybrook Townhomes Common Area and facilities and in aid thereof to mortgage said property, and the rights of such mortgagee in said Properties shall be subordinate to the rights of the homeowners hereunder;

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

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

(h) The right of the Skybrook Townhomes 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;

(i) The easement rights of the Declarant reserved in Article X of this Declaration.

Section Two. Title to the Skybrook Townhomes Common Area. The Declarant hereby covenants for itself, its successors and assigns, that it will convey fee simple title to the Skybrook Townhomes Common Area depicted on the maps of the Properties to the Skybrook Townhomes Association, free and clear of all encumbrances and liens, except those set forth in this Declaration and utility and storm drainage easements. Following conveyance of Skybrook Townhomes Common Area to the Skybrook Townhomes Association, Declarant shall be entitled to a proration credit for all expenses of the



Skybrook Townhomes Association incurred by Declarant (including insurance and real estate taxes) which have not theretofore been reimbursed to Declarant. The Skybrook Townhomes Common Area shall be conveyed without any express or implied warranties, which warranties are hereby expressly disclaimed by Declarant.

#### ARTICLE IV

##### MEMBERSHIP AND VOTING RIGHTS

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

Section Two. Class of Membership. The Skybrook Townhomes Association shall have two classes of voting membership:

Class A. Class A Members shall be all Owners with the exception of the Declarant and 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 for such Lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any Lot.

Class B. The Class B Member(s) shall be the Declarant and Builder and shall be entitled to six (6) votes for each of the Lots that Declarant and Builder own that are shown on the Site Plan of SKYBROOK TOWNHOMES dated January 19, 2001, prepared by Yarbrough-Williams & Associates, Inc. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

(a) when the total votes outstanding in Class A membership equal the total votes outstanding in Class B membership; or

(b) on December 31, 2026.

Section Three. Control by Declarant. Notwithstanding any other language or provision to the contrary in this Declaration, in the Articles of Incorporation, or in the Bylaws of the Skybrook Townhomes Association, Declarant hereby retains the right to appoint and remove any person, whether or not an Owner, on the Board of Directors of the Skybrook Townhomes Association and any officer or officers of the Skybrook Townhomes Association until ninety (90) days after the first of the events to transpire outlined in Section Two above concerning the termination of the Class B Member status of Declarant or Builder or the surrender by Declarant of the authority to appoint and remove directors and officers by an express amendment to this Declaration executed

and recorded by Declarant. Upon the expiration of the period of Declarant's right to appoint and remove directors and officers of the Skybrook Townhomes Association pursuant to the provisions of this Section, such right shall automatically pass to the Owners, including Declarant and Builder if they then own one or more Lots; and a special meeting of the Skybrook Townhomes Association shall be called for and held within ninety (90) days from 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 Skybrook Townhomes Association and Declarant shall deliver the books, accounts, and records, if any, which they have kept on behalf of the Skybrook Townhomes Association as well as any agreements or contracts executed by or on behalf of the Skybrook Townhomes 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 Skybrook Townhomes Association as provided in this Section.

## ARTICLE V

### COVENANT FOR MAINTENANCE ASSESSMENTS

Section One. Creation of the Lien and Personal Obligation of Assessments. The Declarant for each Lot owned within the Properties, hereby covenants, and each Owner of any Lot by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Skybrook Townhomes Association: (1) annual assessments or charges and (2) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, late charges, costs and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, late charges, costs and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation for the delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

Section Two. Purpose of Assessments. The assessments levied by the Skybrook Townhomes Association shall be used exclusively to promote the recreation, health, safety, and welfare of the residents of the Properties and in particular for the improvement and maintenance of the Skybrook Townhomes Common Areas and of the exterior of the dwellings, including the maintenance, repair, and reconstruction of private water and/or sewer lines (and any meters or lift stations associated therewith), private streets, driveways, walks, and parking areas situated on the Skybrook Townhomes Common Area, such maintenance to include the cutting and removal of weeds and grass, the removal of trash and rubbish, or any other maintenance, and for the exterior maintenance of the residences situated upon the Properties as hereinafter provided, for the use and enjoyment of the Skybrook Townhomes 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 Skybrook Townhomes Common Area; the procurement and maintenance of insurance in accordance with this Declaration; the employment of attorneys to represent the Skybrook Townhomes Association when necessary; the provision of adequate reserves for the replacement of capital improvements, including, without limiting the generality of the foregoing, roofs, paving, and any other major expense for which the Skybrook Townhomes Association is responsible, and such other needs as may arise. The annual assessments levied by the Skybrook Townhomes Association may also include the assessments levied against the Lots pursuant to the Master Declaration, if not separately collected by the Master Association.

Section Three. Reserves. The Skybrook Townhomes Association shall establish and maintain an adequate reserve fund for the periodic maintenance, repair, and replacement of improvements to the Skybrook Townhomes Common Areas and those other portions of the Properties which the Skybrook Townhomes Association may be obligated to maintain. Such reserve fund is to be established, insofar as is practicable, out of the annual assessments for common expense.

Section Four. 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 \$1200.00 per Lot (except that pursuant to Section Seven of this Article, the maximum annual assessment for Lots owned by Declarant which are not occupied as a residence shall be \$200.00 per Lot).

(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, except as set forth in Section Six below, but subject to the limitation that any such increase shall not exceed twenty percent (20%).

(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 Four (a) above, unless rejected by a vote of a majority of the Voting Power, in person or by proxy, at a meeting duly called for this purpose.

Section Five. Special Assessments. In addition to the annual assessments authorized above, the Skybrook Townhomes Association may levy in any assessment year a special assessment applicable to that year only for the purpose of supplying adequate reserve funds for the replacement of capital improvements or for defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Skybrook Townhomes Common Area, and in connection with exterior maintenance, including fixtures and personal property related thereto, provided that any such assessment shall have the assent 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 and shall be in the ratio of six to one as provided in Section Four (c) of this Article.

Section Six. Notice and Quorum for any Action Authorized Under Section Four and Five. Within respect to annual assessments provided for in Section Four above, the Board of Directors shall adopt a proposed budget and fix the amount of the annual assessment as to each Lot for any calendar year at least thirty (30) days prior to January 1 of such calendar year, and the Skybrook Townhomes Association shall send written notice of the amount of the annual assessment and a summary of the proposed budget, as well as the amount of the payment due, to each Owner on or before January 5 of such calendar year. To the extent required by North Carolina General Statutes 47F-3-103(c) or other applicable law, such notice shall include notice of a meeting of the Members to consider ratification of the budget, including a statement that the budget may be ratified without a quorum. If such a meeting is required by N.C. General Statutes 47F-3-103(c), or other applicable law, the Board of Directors shall set a date for a meeting of the Members to consider ratification of the budget to be held not less than ten (10) nor more than sixty (60) days after mailing of the summary and notice. If such meeting is required as set forth above, there shall be no requirement that a quorum be present at the meeting. If the proposed budget to be voted on at any such meeting is within the maximum increase limits set forth in Section Four (a) above, the budget is ratified unless at such meeting Members exercising all of the votes in the Skybrook Townhomes Association reject the budget. If the proposed budget to be voted on at any such meeting exceeds the maximum increase limits set forth in Section Four (a), the budget is ratified unless at such meeting Members exercising a majority of the Voting Power reject the budget. The failure of the Skybrook Townhomes Association to send, or of a Member to receive, such notice shall not relieve any Member of the obligation to pay Annual Assessments.

With respect to special assessments provided in Section Five above, written notice of any meeting called for the purpose of taking any action authorized under Section Five shall be sent to all Members no less than thirty (30) 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 each class of membership 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 Seven. Uniform Rate of Assessment. Both annual and special assessments shall, except as herein otherwise specifically provided, be fixed at a uniform rate for all Lots and shall be collected on a monthly basis. Provided, however, that the assessment for Lots owned by Declarant shall at all times be one-sixth of the regular assessments for other Lots.

Section Eight. Date of Commencement of Annual Assessments: Due Dates. The current site plan for the development shows twenty-four (24) buildings. The annual

assessments provided for herein shall commence on a building by building basis. On the first day of the calendar month in which a Lot is conveyed by Declarant, the annual assessment shall commence as to all Lots upon which that building is located. Such annual assessments shall be paid ratably on a monthly basis. The Board of Directors shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period in accordance with the procedures set forth herein. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors. The Skybrook Townhomes Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Skybrook Townhomes Association setting forth whether the assessments on a specified Lot have been paid.

Section Nine. Effect of Nonpayment of Assessments: Remedies of the Skybrook Townhomes Association. A late charge of Twenty and No/100 Dollars (\$20.00) per month or the highest amount permitted by law, whichever is less, shall be added to any assessment not paid within thirty (30) days after the due date, together with interest from the due date at the lesser of one and one-half percent (1.5%) per month or the highest rate permitted by law. The Skybrook Townhomes Association may bring an action at law against the Owner personally obligated to pay the same or foreclose the lien against the property, and in either event: interest, costs, and reasonable attorney's fees of any such action shall be added to the assessment. No Owner may waive or otherwise escape liability for the assessments provided for herein by nonuse of the Skybrook Townhomes Common Area or abandonment of his Lot.

Section Ten. 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 and ad valorem taxes. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage or tax foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No such sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

Section Eleven. Working Capital Fund. At the time of closing of the sale of each Lot to a party other than a Builder, a sum equal to at least two months' assessment for such Lot shall be collected and transferred to the Skybrook Townhomes Association to be held as a working capital fund. Such sum shall be collectible upon the closing of the sale of each Lot by a Builder to a home purchaser. The purpose of said fund is to insure that the Skybrook Townhomes Association Board will have adequate cash available to meet unforeseen 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.

## ARTICLE VI

### EXTERIOR MAINTENANCE AND PARTY WALLS

Section One. Maintenance by Skybrook Townhomes Association. In addition to maintenance of the Skybrook Townhomes Common Area, the Skybrook Townhomes Association shall provide exterior maintenance upon each Lot (and home located thereon) which is subject to assessment hereunder as follows: paint and/or stain the exterior of the townhouses as required from time to time; repair, replace and care for (i) roofs, guttering, soffits and fascia, (ii) all exterior building surfaces (including siding and trim), (iii) trees, shrubs (excluding those planted by an Owner), grass and other landscaping; walks, mailboxes, fences installed by Declarant or the Skybrook Townhomes Association, exterior post lights (excluding electricity therefore), and other exterior improvements; provided, however, such exterior maintenance shall not include glass surfaces, windows or door replacements or caulking. Further, the Owner of any Lot may, at his election, plant flowers in the front and rear beds established by Declarant in developing the Lot; provided that such maintenance by the Owner does not hinder the Skybrook Townhomes Association in performing its maintenance of the exterior of the house and the remaining yard spaces. No such maintenance by a Lot Owner shall reduce the assessment payable by him to the Skybrook Townhomes Association. The Owner shall not plant any vegetation in the front, rear or side yard except with the prior written approval of the Skybrook Townhomes Association.

(As a matter of information to future Members of the Skybrook Townhomes Association, the Declarant wishes to make it known that due to differing amounts of exposure to the elements and other factors, some dwellings may require more maintenance than others and that it is in the best interest of the entire Skybrook Townhomes Association that all units be properly maintained and that the Skybrook Townhomes Association shall be required to provide such maintenance provided for herein and make a uniform charge without regard to the actual cost of maintenance of each dwelling.)

In the event that the need for maintenance, repair or replacement is caused through the willful or negligent act of the Owner, his family, or guests, or invitees, the cost of such maintenance or repairs shall be added to and become a part of the assessment to which such Lot is subject. The Skybrook Townhomes Association is hereby granted an easement right of access to go upon any Lot for performance of repairs or maintenance, the responsibility of which is the Skybrook Townhomes Association's hereunder.

### Section Two. Party Walls.

(a) General Rules of Law to Apply. Each wall which is built as a part of the original construction of the homes upon the Properties and placed on the dividing line between the 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. No alterations may be made to any party wall other than alterations to the interior surfaces.

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

(c) Destruction by Fire or Other Casualty. 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, 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) Weatherproofing. Notwithstanding any other provision of this Article an owner who, by his negligent or willful act, causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

(e) 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.

(f) Arbitration. In the event of any dispute arising concerning a party wall or under the provisions of this Article, each party shall choose one arbitrator, and such arbitrators shall choose one additional arbitrator, and the decision shall be by a majority of all the arbitrators.

## ARTICLE VII

### ARCHITECTURAL CONTROL

No building, fence, signs, wall or other structure shall be commenced, erected, or maintained upon the Properties, nor shall any exterior addition to or change or alteration therein (including but not limited to, color or painting or the exterior and type of exterior finish, any existing or builder-installed construction material, plant material or ground cover) be made, except in exceptional cases, when in such case, three copies of the plans and specifications showing the nature, kind, shape, height, 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 Skybrook Townhomes Association, or by an

architectural committee composed of three (3) or more representatives appointed by the Board (said committee being hereinafter referred to as the "Architectural Control Committee"). Absent such approval, the proposed improvement may not be commenced. No fence, deck or patio may be erected or constructed so as to extend more than fourteen (14) feet from the predominant rear building line of the dwelling located on the Lot. "Predominant Rear Building Line" shall be defined as the original ground floor rear building line (excluding storage rooms). If more than one Rear Building Line exists (due to building offsets) the line with the maximum lineal footage will be considered the "Predominant Rear Building Line". No fence, deck or patio may be constructed or erected in the side yard of Lots located at the ends of buildings. Notwithstanding the above, the Board of Directors of the Skybrook Townhomes Association shall have the authority to waive this restriction in exceptional cases where the construction of fences, decks or patios more than fourteen (14) feet from the Predominant Rear Building Line, but still within the Lot lines, do not adversely affect any of the conditions or restrictions contained in this Declaration. The Skybrook Townhomes Association shall not maintain the landscaping of any area which is fenced in by an owner.

In the event an Owner of any Lot in the Properties shall make unauthorized changes to the premises and the improvements situated thereon in a manner unsatisfactory to the said Board of Directors or the Architectural Control Committee, said Board of Directors or the Architectural Control Committee shall have the right, through its agents and employees, to enter upon said parcel and to repair, maintain and restore the Lot and the exterior of the buildings and any other improvements erected thereon. The cost of such exterior maintenance and any other costs or attorney's fees incurred in the enforcement of the rights under these provisions shall be added to and become a part of the assessments to which such Lot is subject. Any approval by the said Board of Directors or the Architectural Control Committee shall be in accordance with the requirements set forth hereafter.

## ARTICLE VIII

### INSURANCE

Section One. By Owners. Each Owner shall procure and maintain fire and extended coverage insurance as follows:

(a) Coverage. Each townhouse unit and improvements upon a Lot shall be insured in an amount equal to one hundred percent (100%) insurable replacement value as determined annually by the Skybrook Townhomes Association with the assistance of the insurance company providing coverage.

Such coverage shall provide protection against:

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



(ii) Such other risks as from time to time shall be customarily covered with respect to buildings on the land; and

(iii) Such policies shall contain clauses providing for waiver of subrogation.

(b) Liability. Public liability insurance shall be secured by each Owner with limits of liability of no less than Three Hundred Thousand and No/100 (\$300,000.00) Dollars per occurrence.

All such policies shall name the Skybrook Townhomes Association as one of the named insureds as its interest appears and copies of said policies and renewals thereof shall be furnished to the Skybrook Townhomes Association. Upon failure by any Owner to promptly obtain the required coverage, naming the Skybrook Townhomes Association as one of the named insureds, or to pay the premiums due on such policy, the Skybrook Townhomes Association may, but is not required to, obtain the required coverage, naming the Skybrook Townhomes Association as one of the named insureds, and add the cost of the premium and all other costs of obtaining such coverage to the annual assessment against the subject Lot. Such cost shall be due and payable on or before the first day of calendar month following payment of same by the Skybrook Townhomes Association.

Owners may, at their option, obtain insurance coverage at their own expense upon their own personal property and for their personal liability and living expense and such other coverage as they may desire.

Section Two. By Skybrook Townhomes Association. The Skybrook Townhomes Association shall procure and maintain insurance coverage as follows:

(a) Skybrook Townhomes Common Areas. All insurance policies upon the Skybrook Townhomes Common Area shall be purchased by the Skybrook Townhomes Association for the benefit of all the Skybrook Townhomes Association and the Owners and their mortgagees as their interest may appear, and provisions shall be made for the issuance of mortgagee endorsements to the mortgagees of Owners.

(b) Coverage. All buildings and improvements upon the Skybrook Townhomes Common Area and all personal property of the Skybrook Townhomes Association included in the Skybrook Townhomes Common Areas or otherwise owned by the Skybrook Townhomes Association shall be insured in an amount equal to one hundred percent (100%) insurable replacement value as determined annually by the Skybrook Townhomes Association with the assistance of the insurance company providing coverage. Such coverage shall provide protection against:

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

(ii) Such other risks as from time to time shall be customarily covered with respect to buildings on the land; and

(iii) Such policies shall contain clauses providing form waiver of subrogation.

(c) Liability. Public liability insurance shall be secured by the Skybrook Townhomes Association with limits of liability of no less than 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. There shall also be obtained such other insurance coverage as the Skybrook Townhomes Association shall determine from time to time to be desirable and necessary.

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

(e) Proceeds. All insurance policies purchased by the Skybrook Townhomes Association shall be for the benefit of the Skybrook Townhomes Association and the Owners and their mortgagees, as their interests may appear, and shall provide that all proceeds thereof shall be payable to the Skybrook Townhomes Association as insurance trustee under this Declaration. The sole duty of the Skybrook Townhomes Association as insurance trustee shall be to receive such proceeds as are paid and to hold the same in trust for the purpose 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 Skybrook Townhomes Common Areas and facilities are to be held for the Skybrook Townhomes Association.

(ii) If applicable due to insured casualty occurring on the Skybrook Townhomes Common Area, proceeds on account of damage to Lots shall be held in undivided shares for the Owners of damaged Lots in proportion to the cost of repairing the damage suffered by each Owner, which cost shall be determined by the Skybrook Townhomes Association.

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

(f) Subrogation. Each insurer shall waive its right to subrogation under any policy maintained pursuant to this Section Two against any Owner or member of Owner's household.

(g) Act or Omission of Owner. No act or omission of any Owner, unless such Owner is acting within the scope of the Owner's authority on behalf of the

Skybrook Townhomes Association, will preclude recovery under any of the policies maintained pursuant to this Section Two.

(h) Other Insurance. If, at the time of a loss, there is other insurance in the name of an Owner covering the same risk covered by the Skybrook Townhomes Association's policy, the Skybrook Townhomes Association's policy shall provide primary insurance.

(i) Issuance of Certificates; Cancellation. Any insurer that has issued an insurance policy under this Section shall issue certificates or memoranda of insurance to the Skybrook Townhomes Association and, upon written request, to any Owner or Mortgagee. Any insurer issuing an insurance policy under this Section Two may not cancel or refuse to renew the policy until thirty (30) days after notice of the proposed cancellation or non renewal has been mailed to the Skybrook Townhomes Association, each Owner and each Mortgagee to whom certificates or memoranda of insurance have been issued at their respective last known addresses.

Section Three. Distribution of Insurance Proceeds. Proceeds of insurance policies received by the Skybrook Townhomes 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 therefore.

(b) Reconstruction or Repair. The remaining proceeds shall be paid to defray the cost of repairs to the Skybrook Townhomes Common Area and, if applicable due to insured casualty occurring on the Skybrook Townhomes Common Area, proceeds on account of damage to Lots shall be paid to defray the cost of repair to the Lots. Any proceeds remaining after defraying such costs shall be distributed to the beneficial Owners as provided in Section Two(e)(ii).

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

Section Five. Obligation to Rebuild. Any portion of the Property for which insurance is required under Section One shall be promptly and diligently repaired, replaced, and restored by the Owner thereof, unless (i) the planned community and this Declaration are terminated, or (ii) repair or replacement would be illegal under any state or local health or safety statute or ordinance.

Any portion of the Property for which insurance is required under Section Two of this Article which is damaged or destroyed shall be repaired or replaced promptly by the Skybrook Townhomes Association unless (i) the planned community and this

Declaration are terminated, (ii) repair or replacement would be illegal under any state or local health or safety statute or ordinance, or (iii) the Owners decide not to rebuild by an eighty percent (80%) vote. The cost of repair or replacement in excess of insurance proceeds and reserves is a common expense. If any portion of the Property is not repaired or replaced, (i) the insurance proceeds attributable to the damaged Skybrook Townhomes Common Areas shall be used to restore the damaged area to a condition compatible with the remainder of the Property and (ii) the remainder of the proceeds shall be distributed to all the Owners or lien holders, as their interests may appear, in proportion to the Skybrook Townhomes Common Area liabilities of all the Lots.

## ARTICLE IX

### USE RESTRICTIONS

Section One. Rules and Regulations. The Board of Directors of the Skybrook Townhomes Association shall have the power to formulate, publish and enforce reasonable rules and regulations concerning the use and enjoyment of the yard space of each Lot and the Skybrook Townhomes Common Areas. Such rules and regulations may provide for imposition of fines or penalties for the violation thereof, or for the violation of any of the covenants and conditions contained in this Declaration.

Section Two. Antenna. No outside antennas shall be erected by an Owner except in accordance with the Antenna Placement Procedures and Guidelines as the Board of Directors may adopt from time to time.

Section Three. Restrictions on Use. The Lots shall be occupied and used by Owners for residential purposes only and no trade or business may be conducted in or from any Lot, except that an Owner residing in a dwelling on a Lot may conduct business activities within the dwelling as long as:

(a) The existence or operation of the business activity is not apparent to detectable by sight, sound or smell from outside the dwelling;

(b) The business activity conforms to all zoning requirements for the Property;

(c) The business activity does not involve persons coming onto the Property who do not reside in the Property or door-to-door solicitation of residents of the Property;

(d) The business activity is consistent with the residential character of the Property and does not constitute a nuisance, a hazardous or offensive use or threaten the security or safety of other residents of the Property, as may be determined in the sole discretion of the Board of Directors of the Skybrook Townhomes Association.

The term "business" and "trade" as used in this Section shall be construed to have the ordinary, generally accepted meanings, and shall include, without limitation, any occupation, work or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether:

- (i) such activity is engaged in full or part time;
- (ii) such activity is intended or does generate a profit; or
- (iii) a license is required therefore.

This section shall not apply to any activity conducted by the Declarant or any Builder with respect to its development and sale of the Property or its use of any Lots which it owns within the Property.

The foregoing provisions of this Section or any other provision of this Declaration notwithstanding, Declarant or Builder (provided that such Builder obtains the prior written approval of Declarant), or their its successors or assigns, shall have an easement to maintain sales offices and models for sales of Lots throughout the Property. Declarant or Builder (provided that such Builder obtains the prior written approval of Declarant), and their successors or assigns, shall have the right to relocate, and to discontinue and reestablish, sales offices and models within the Property from time to time until all of the Lots have been conveyed to Owners other than Declarant. Declarant or Builder (provided that such Builder obtains the prior written approval of Declarant), their successors and assigns, also shall have the right to change use or combination of uses of such offices or models, provided that such offices or models shall be used only for sales offices or models.

The Declarant or Builder (provided that such Builder obtains the prior written approval of Declarant), their successors or assigns, shall also have an easement to maintain signs on the Skybrook Townhomes Common Area advertising the Property until all of the Lots have been conveyed to Owners other than Declarant.

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

Section Five. Nuisance. No activity deemed noxious or offensive by the Board of Directors shall be carried on upon any Lot or within the Skybrook Townhomes 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 of Directors. Examples of such offensive activities shall include, but are not limited to, the origination or emission of 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, exercise equipment, athletic equipment, 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.

Section Six. Parking of Vehicles and Use of Property. Unless otherwise permitted by the Rules and Regulations no boat, trailer, recreational vehicle, camper, camper truck or commercial vehicle shall be parked, stored or left (a) on any undesignated part of the Skybrook Townhomes Common Area, (b) in any driveway or (c) on any other part of a Lot, (d) or otherwise in the Project unless the same are fully enclosed within the garage located on the Lot. Any such vehicle shall be parked, stored or left wholly within the garage located upon the Lot, except to the extent same is already occupied to capacity, in which case such vehicle may be parked temporarily in the driveway once during any calendar month for not more than 24 consecutive hours. This Restriction shall not apply to sales trailers, construction trailers, or other vehicles which may be used by Declarant or a Builder (provided that such Builder obtains the prior written approval of Declarant) and their agents and contractors in the conduct of their business prior to Completion of Sales. No boat, truck, trailer, pre-manufactured home, camper, recreational vehicle or tent shall be used as a living or dwelling area within Project. No repairs to or maintenance of any automobile or other vehicle shall be made or performed on any driveway within the Project, except in the case of emergency and except as may be permitted by the Rules and Regulations. No unlicensed, wrecked or inoperable vehicles may be left on a Lot unless the same are fully enclosed within the garage located on the Lot.

Each Owner shall be entitled to park no more than two vehicles within the Properties unless the Lot has a two car garage in which case the owner shall be entitled to park three cars within the Properties. An owner shall not park on any portion of the Skybrook Townhomes Common Area or the streets within the Properties. The designated parking spaces within the streets within the Properties are for the use of visitors of the Owners.

Section Seven. Signs. With the exception of signs erected by Declarant or a Builder pursuant to Article XI hereof, no sign of any kind whatsoever 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 Board of Directors of the Skybrook Townhomes Association.

Section Eight. Livestock and Poultry. No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot; provided, however, dogs, cats or other household pets may be kept, provided they are not kept, bred or maintained for any commercial purposes, and provided facilities for such pets, and pets themselves do not create a nuisance as determined by the Board of Directors or its designated committee, in which case the nuisance will immediately be abated upon request of said Board of Directors or its designated committee.

Section Nine. Control of Dogs. Every person owning or having possession, charge, care, custody or control of any dog shall keep such dog exclusively upon his own premises; provided, however, that such dog may be off the premises if it be under the

control of a competent person and restrained by a chain, leash or other means of adequate physical control. No dog shall be left unattended by an owner outside of the townhouse on the Lot. Each dog owner is required to pick up from the Lots, the Common Open Space and the Public Rights of Ways the waste deposits of the dog. Such waste deposits must be placed in garbage and refuse containers approved by the Board of Directors.

Section Ten. 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 the Board of Directors and any health or public safety authority having jurisdiction over the property. All incinerators or other equipment shall be kept in clean and sanitary condition. No trash, garbage or other waste may be placed within the Skybrook Townhomes Common Area, except in containers approved by the Board of Directors.

Section Eleven. Drying Clothes. No drying or airing of any clothing or bedding shall be permitted outdoors on any Lot unless the same shall be fully enclosed within the patio area of the Lot and not visible from outside of the Lot.

## ARTICLE X

### EASEMENTS

All of the Properties, including Lots and Skybrook Townhomes Common Areas, shall be subject to such easements for driveways, walkways, parking areas, water lines, sanitary sewers, storm drainage facilities, gas lines, telephone, and electric power line and other public utilities as shall be established by the Declarant or by its predecessors in title, prior to the subjecting of the Properties to this Declaration; and the Skybrook Townhomes Association shall have the power and authority to grant and establish upon, over, under, and across the Skybrook Townhomes Common Areas conveyed to it, such further easements as are requisite for the convenient use and enjoyment of the Properties. 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 Skybrook Townhomes Common Areas, now or hereafter owned by the Skybrook Townhomes Association, for the purpose of construction of improvements within the Properties, including the right of temporary storage of construction materials on said Skybrook Townhomes Common Areas.

So long as the Declarant owns any property shown on the map recorded in Map Book 37 at page 197 of the County Public Registry, or any map of the Properties hereafter recorded in the County Registry, or any of the property conveyed to Declarant by deed recorded in Book 12554 at Page 48 of the County Public Registry, or any other adjacent property, Declarant reserves blanket easements and the right to grant such specific easements over all Lots and Skybrook Townhomes Common Areas, as may be necessary in conjunction with the orderly development of the property shown on the map recorded in Map Book 37 at page 197 of the County Public Registry, or any map of

the Properties hereafter recorded in the County Registry or of the property conveyed to Declarant by deed recorded in Book 12554 at Page 48 of the County Public Registry or any adjacent property (including without limitation the planning, construction, marketing, leasing, management and maintenance of improvements) for access, construction and maintenance of public or private utilities and storm drainage (whether subsurface or surface). No such easements may be located within the area beneath any building located thereon.

All Lots shall be subject to easements for the encroachment of initial improvements constructed on adjacent Lots by the Declarant, its successors or assigns, to the extent that such initial improvements actually encroach including, but not limited to, such items as overhanging eaves and walls, and decks.

The Declarant reserves access easements over all Lots for construction, either for that Lot or any adjacent property and easements for the installation of public or private utilities and storm drainage (whether subsurface or surface).

There are reserved cross-easements in favor of owners of Lots that comprise a building for access to and from each other Lot comprising the building and the Skybrook Townhomes Common Area adjacent to the Lots comprising the building, including, but not limited to, the transportation of roll-out garbage containers; however, this does not include access to approved decks, patios or areas with approved fences.

There are hereby established easements in favor of Owners of Lots served by joint driveways for the use of such driveways. The Skybrook Townhomes Association shall be responsible for the maintenance, repair, and replacement of such driveways.

## ARTICLE XI

### DECLARANT'S RIGHTS

The right is reserved by Declarant and any Builder (provided such Builder obtains the prior written approval of Declarant), their agents, successors or assigns, to place and maintain on the Properties all model homes, sales offices, advertising signs and banners and lighting in connection therewith and other promotional facilities at such locations and in such forms as shall be determined by Declarant. There is also reserved, unto Declarant and any Builder (provided such Builder obtains the prior written approval of Declarant), their agents, successors, assigns, and prospective purchasers and tenants, the right of ingress, egress and transient parking in and through the Properties for such sales purposes. Declarant also reserves the right for itself, its agents, successors or assigns, and for any Builder (provided such Builder obtains the prior written approval of Declarant), to maintain on the Properties without charge (a) a general construction office for Declarant's or such Builder's contractors and (b) appropriate parking facilities for the employees of Declarant or such Builder, their agents, successors, assigns and contractors. Declarant's aforesaid reserved rights shall exist at any time Declarant or any such Builder, their agents, successors or assigns, is engaged in the construction, sale or leasing of residences on any portion of the



Properties or on any land adjacent to the Properties and no charge shall be made with respect thereto. Notwithstanding any provision herein to the contrary, the rights and easements created under this Declaration are subject to the right of Declarant to execute all documents and do all other acts and things affecting the premises, which in the Declarant's opinion, are required to implement any right of Declarant set forth in this Declaration (including the making of any dedications or conveyances to public use) provided any such document or act is not inconsistent with the then existing property rights of any Owner.

## ARTICLE XII

### DISPUTE RESOLUTIONS AND LIMITATIONS ON LITIGATION

Section One. Agreement to Avoid Costs of Litigation and to Limit Rights to Litigate Disputes. The Skybrook Townhomes Association, Declarant, all Owners, and any other parties subject to this Declaration, and any person not otherwise subject to this Declaration who agrees to submit to this Article (collectively, "Bound Parties") agree to encourage the amicable resolution of disputes involving the Properties in order to avoid the emotional and financial costs of litigation. Accordingly, each Bound Party covenants and agrees that all claims, grievances or disputes between such Bound Party and any other Bound Party involving the Properties including, without limitation, claims, grievances or disputes arising out of or relating to the interpretation, application or enforcement of this Declaration, the By-laws, the Skybrook Townhomes Association rules, or the Articles (collectively "Claim"), except for those Claims authorized in Section Two, shall be resolved using the procedures set forth in Section Three in lieu of filing suit in any court or initiating proceedings before any administrative tribunal seeking redress or resolution of such Claim.

Section Two. Exempt Claims. The following Claims ("Exempt Claims") shall be exempt from the provisions of Section Three:

(a) any suit by the Skybrook Townhomes Association against any Bound Party to enforce the provisions of Article V (Assessments);

(b) any suit by the Skybrook Townhomes Association to obtain a temporary restraining order (or equivalent emergency equitable relief) and such other ancillary relief as the court may deem necessary in order to maintain the status quo and preserve the Skybrook Townhomes Association's ability to enforce the provisions of Article VII (Architectural Control) and Article IX (Use Restrictions);

(c) any suit between Owners (other than Declarant) seeking redress on the basis of a Claim which would constitute a cause of action under Federal law or the laws of the State of North Carolina in the absence of a claim based on the Declaration, By-laws, Articles or Rules of the Skybrook Townhomes Association, if the amount in controversy exceeds \$5,000.00;

(d) any suit arising out of any written contract between Owners, or between the Declarant and any Builder, which would constitute a cause of action under the laws of the State of North Carolina in the absence of the Declaration, By-laws, and Articles of the Skybrook Townhomes Association: and

(e) any suit in which all parties are not Bound Parties.

Any Bound Party having an Exempt Claim may submit it to the alternative dispute resolution procedures set forth in Section Three, but there shall be no obligation to do so. The submission of an Exempt Claim involving the Skybrook Townhomes Association to the alternative dispute resolution procedures of Section Three shall require the approval of the Skybrook Townhomes Association.

Section Three. Mandatory Procedures for All Other Claims. All claims other than Exempt Claims shall be resolved using the following procedures:

(a) Notice. Any Bound Party having a claim ("Claimant") against any other Bound Party ("Respondent"), other than an Exempt Claim, shall notify each Respondent in writing of the Claim (the "Notice"), stating plainly and concisely:

1. The nature of the Claim, including date, time, location and Respondent's role in the Claim;

2. The basis of the Claim (i.e., the provisions of this Declaration, the By-laws, the Articles or Rules or other authority out of which the Claim arises);

3. what Claimant wants Respondent to do or not do to resolve the Claim; and

4. that Claimant wishes to resolve the Claim by mutual agreement with Respondent and is willing to meet in person with Respondent at a mutually agreeable time and place to discuss in good faith ways to resolve the Claim.

(b) Negotiation.

1. Each Claimant and Respondent (the "Parties") shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good negotiation.

2. Upon receipt of a written request from any Party, accompanied by a copy of the Notice, the Board may appoint a representative to assist the Parties in resolving the dispute by negotiation, if in its discretion it believes its efforts will be beneficial to the Parties and to the welfare of the community.

(c) Mediation.

1. If the Parties do not resolve the Claim through negotiation within 30 days of the date of the Notice (or within such other period as may be agreed upon by the Parties) ("Termination of Negotiations"), Claimant shall have 30 additional days within which to submit the Claim to mediation under the auspices of any dispute resolution center or other such independent agency providing similar services in the Mecklenburg County or the metropolitan Mecklenburg, North Carolina area upon which the Parties may mutually agree.

2. If Claimant does not submit the Claim to mediation within 30 days after Termination of Negotiations, Claimant shall be deemed to have waived the Claim, and Respondent shall be released and discharged from any and all liability to Claimant on account of such claim; provided, nothing herein shall release or discharge Respondent from any liability to Persons not a Party to the foregoing proceedings.

3. If the Parties do not settle the Claim within 30 days after submission of the matter to the mediation process, or within such time as determined reasonable or appropriate by the mediator, the mediator shall issue a notice of termination of the mediation proceedings ("Termination of Mediation"). The Termination of Mediation notice shall set forth when and where the Parties met, that the parties are at an impasse, and the date that mediation was terminated.

4. Each Party shall, within five days of the Termination of Mediation, make a written offer of settlement in an effort to resolve the Claim. The Claimant shall make a final written settlement demand ("Settlement Demand") to the Respondent. The Respondent shall make a final written settlement offer ("Settlement Offer") to the Claimant. If the Claimant fails to make a Settlement Demand, Claimant's original Notice shall constitute the Settlement Demand. If the Respondent fails to make a Settlement Offer, Respondent shall be deemed to have made a "zero" or "take nothing" Settlement Offer.

(d) Final and Binding Arbitration.

1. If the Parties do not agree in writing to accept either the Settlement Demand, the Settlement Offer, or otherwise resolve the Claim within 15 days of the Termination of Mediation, the Claimant shall have 15 additional days to submit the Claim to arbitration in accordance with the Rules of Arbitration contained in Exhibit A or the Claim shall be deemed abandoned, and Respondent shall be released and discharged from any and all liability to Claimant arising out of such Claim; provided, nothing herein shall release or discharge Respondent from any liability to Persons not a Party to the foregoing proceedings.

2. This subsection (d) is an agreement of the Bound Parties to arbitrate all Claims except Exempt Claims and is specifically enforceable under the applicable arbitration laws of the State of North Carolina. The arbitration award (the

"Award") shall be final and binding, and judgment may be entered upon it in any court of competent jurisdiction to the fullest extent permitted under the laws of the State of North Carolina.

Section Four. Allocation of Costs of Resolving Claims.

(a) Each Party shall bear its own costs incurred prior to and during the proceedings described in Section Three (a), (b) and (c) including the fees of its attorney or other representative. Each Party shall share equally all charges rendered by the mediator(s) pursuant to Section Three (c).

(b) Each Party shall bear its own costs (including the fees of its attorney or other representative) incurred after the Termination of Mediation under Section Three (c) and shall share equally in the costs of conducting the arbitration proceeding (collectively, "Post Mediation Costs"), except as otherwise provided in Section Four (c).

(c) Any Award which is equal to or more favorable to Claimant than Claimant's Settlement Demand shall add such Claimant's Post Mediation Costs to the Award, such Costs to be borne equally by all Respondents. Any Award which is equal to or less favorable to Claimant than Respondent's Settlement Offer to that Claimant shall also award to such Respondent its Post Mediation Costs, such Costs to be borne by all such Claimants.

Section Five. Enforcement of Resolution. If the Parties agree to a resolution of any Claim through negotiation or mediation in accordance with Section Three and any Party thereafter fails to abide by the terms of such agreement, or if any Party fails to comply with the terms of any Award following arbitration, then any other Party may file suit or initiate administrative proceedings to enforce such agreement or Award without the need to again comply with the procedures set forth in Section Three. In such event, the Party taking action to enforce the agreement or Award shall be entitled to recover from the non-complying Party (or if more than one non-complying Party, from all such Parties pro rata) all costs incurred in enforcing such agreement or Award, including, without limitation, attorneys' fees and court costs.

## ARTICLE XIII

### GENERAL PROVISIONS

Section One. Enforcement. The Skybrook Townhomes Association, or any 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 of this Declaration. Failure by the Skybrook Townhomes 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 Two. Severability. Invalidation 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 Three. Amendment. During any period in which a two-class voting structure is in effect, Declarant may amend this Declaration without the approval of any Member or Mortgagee provided the amendment does not materially alter or change any Owner's right to the use and enjoyment of such Owner's Lot or of the Skybrook Townhomes Common Area as set forth in this Declaration and the amendment does not adversely affect the title to any Lot; however, such amendment shall require the prior written consent of the Department of Housing and Urban Development and the Veterans' Administration, if at the time of such amendment the Department of Housing and Urban Development and the Veterans' Administration are insurers or guarantors of any loan secured by a Mortgage. In the event that such amendment would materially and adversely affect the security, title and interest of any Mortgagee, such amendment shall be valid only upon the written consent of sixty-seven percent (67%) of the Mortgagees (based on one vote for each mortgage owned) and the prior written consent of the Department of Housing and Urban Development and the Veterans' Administration, if at the time of such amendment the Department of Housing and Urban Development and the Veterans' Administration are insurers or guarantors of any loan secured by a Mortgage..

Should the Veterans' Administration, the Federal National Mortgage Association, or the Federal Home Loan Mortgage Corporation subsequently delete any of their respective requirements which necessitate the provisions of this Declaration or make such requirements less stringent, the Board, without approval of the Owners, may cause an amendment to this Declaration to be recorded to reflect such changes.

Any other amendments of this Declaration shall require (i) if a two-class voting structure is in effect, the vote or written consent of sixty-seven percent (67%) of the Voting Power of each class of Members of the Skybrook Townhomes Association as such classes are set forth in the Bylaws and this Declaration; or (ii) if a two-class voting structure is not in effect, the vote or written consent of sixty-seven percent (67%) of the Voting Power of the Skybrook Townhomes Association; provided, however, that the percentage of the Voting Power (of each class of Members, of the Skybrook Townhomes Association, and of Members other than Declarant) necessary to amend a specific provision of this Declaration shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that provision.

Notwithstanding anything to the contrary contained in this Declaration, any amendment which establishes, governs, provides for or regulates any one of the following: (i) voting; (ii) assessments, assessment liens or subordination of such liens; (iii) reserves for maintenance, repair and replacement of the Skybrook Townhomes Common Area; (iv) insurance or fidelity bonds; (v) right to use of the Skybrook Townhomes Common Area; (vi) responsibility for maintenance and repair of the Project; (vii) annexation or withdrawal of property to or from the Project (other than as provided in Article I, Section 2); (viii) the boundaries of any Lot (except that the

Declarant may change the boundaries of any Lot for any reason prior to conveyance thereof to a third party, including the elimination of a Lot or Lots, and in the event of any such elimination of Lots, the eliminated Lots shall no longer be deemed to be Lots hereunder); (ix) interests in the Skybrook Townhomes Common Area; (x) leasing of ownership interests; (xi) imposition of any right of first refusal or similar restriction on the right of an Owner to sell, transfer, or otherwise convey his Lot; (xii) any provisions which are for the express benefit of Mortgagees; or (xiii) any other material amendment shall require (i) if a two-class voting structure is in effect, the vote or written consent of sixty-seven percent (67%) of the Voting Power of each class of Members, or (ii) if a two-class voting structure is not in effect, the vote or written consent of sixty-seven percent (67%) of the total Voting Power of the Skybrook Townhomes Association.

Any instrument amending this Declaration must contain a certification by the Secretary of the Skybrook Townhomes Association that the amendment has been correctly adopted in accordance with the provisions of this Declaration and be recorded in the official records of the County. Any such amendment shall be effective upon the date of recordation.

Section Four. Term. This Declaration shall remain in force for a term of twenty (20) years from the date this Declaration is recorded, after which time it shall be automatically extended for successive periods of ten (10) years, unless sooner terminated by the affirmative vote of seventy-five percent (75%) of the total Voting Power of the Skybrook Townhomes Association and the written consent of seventy-five percent (75%) of the Mortgagees.

Section Five. Management and Contract Rights of Skybrook Townhomes Association. Declarant shall enter into a contract with a Management company or manager for the purposes of providing all elements of the operation, care, supervision, maintenance, and management of the property. Declarant contemplates that the initial manager may be the Declarant or a firm affiliated with the Declarant. No such management contract shall be binding upon the Skybrook Townhomes Association except through express adoption or ratification of the terms and conditions of such contract. Any such contract or lease entered into by Declarant or by the Skybrook Townhomes Association while Declarant is in control thereof shall contain a provision allowing the Skybrook Townhomes Association to terminate such contract, without justification or penalty, upon ninety days notice after transfer of management by Declarant to the Skybrook Townhomes Association.

Section Six. FHA/VA Approval. As long as there is a Class B membership, the following actions will require the prior written approval of the Federal Housing Administration or the Veterans Administration (if at the time of such action the Federal Housing Administration or the Veterans' Administration are insurers or guarantors of any loan secured by a Mortgage): annexation of additional Properties (other than as provided in Article I, Section 2), dedication of Skybrook Townhomes Common Area, and amendment of this Declaration of Covenants, Conditions, and Restrictions.

Section Seven. Rights of Noteholders. Any institutional holder of a Mortgage on a Lot will, upon written request, be entitled to (a) inspect the books and records of the Skybrook Townhomes Association during normal business hours, (b) receive an annual financial statement of the Skybrook Townhomes Association within ninety (90) days following the end of its fiscal year, (c) receive written notice of all meetings of the Skybrook Townhomes Association and the right to designate a representation to attend all such meetings, (d) receive written notice of any condemnation or casualty loss that affects either a material portion of the project or the Lot securing its Mortgage, (e) receive written notice of any sixty-day delinquency in the payment of assessments or charges owed by the Owner of any 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 Skybrook Townhomes 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.

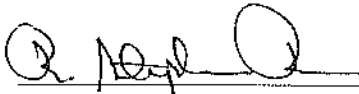
Section Eight. Notice. Any notice required or desired to be given under the provisions of this Declaration shall be deemed to have been properly delivered when deposited in the United States mail, postage prepaid, directed to the last known Mortgagee or other party entitled to notice, at the last known address for each such party, all as shown on the books and records of the Skybrook Townhomes Association at the time such notice is given.

Section Nine. Exculpation. It is expressly understood and agreed that nothing contained in this Declaration shall be interpreted or construed as creating any liability whatsoever, directly or indirectly, against Declarant or any of its officers, members, managers, employees, agents, attorneys, heirs, executors, legal representatives, successors or assigns (collectively, the "Declarant Related Parties") for monetary relief or damages. In particular, and without limiting the generality of the foregoing, if any proceeding shall be brought to enforce the provisions of this Declaration, the party instituting such proceeding shall not be entitled to take any action to procure any money judgment against any of the Declarant Related Parties.

[INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has caused this instrument to be executed in its name the day and year first above written.

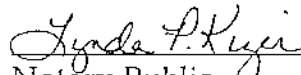
MVC-PACE, LLC,  
A North Carolina limited liability company

By:   
R. Stephen Pace, Manager

STATE OF NORTH CAROLINA  
COUNTY OF MECKLENBURG

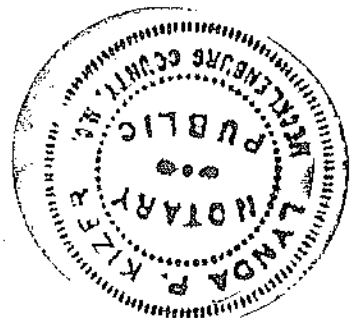
I, Lynda P. Kizer, a Notary Public in and for said County and State, do hereby certify that R. Stephen Pace, manager of MVC-PACE, LLC, a North Carolina limited liability company, personally appeared before me this day, and acknowledged the due execution of the foregoing instrument on behalf of the company.

WITNESS my hand and official seal, this 21<sup>st</sup> day May, 2002.

  
Notary Public

My Commission Expires: 10/24/05

[NOTARIAL SEAL]





## EXHIBIT A

### **Rules of Arbitration**

1. Claimant shall submit a Claim to arbitration under these Rules by giving written notice to all other Parties stating plainly and concisely the nature of the Claim, the remedy sought and Claimant's desire to submit the Claim to arbitration ("Arbitration Notice").
2. Each party shall select an arbitrator ("Party Appointed Arbitrator"). The Party Appointed Arbitrators shall, by agreement, select one or two neutral arbitrators ("Neutral(s)") so that the total arbitration panel ("Panel") has an odd number of arbitrators. If any Party fails to appoint a Party Appointed Arbitrator within 20 days from the date of the Arbitration Notice, the remaining arbitrators shall conduct the proceedings, selecting a Neutral in place of any missing Party Appointed Arbitrator. The Neutral arbitrator(s) shall select a chairperson ("Chair").
3. If the Panel is not selected under Rule 2 within 45 days from the date of the Arbitration Notice, Claimant may notify the North Carolina chapter of *The Community Associations Institute*, which shall appoint one Neutral ("Appointed Neutral"), notifying the Appointed Neutral and all Parties in writing of such appointment. The Appointed Neutral shall thereafter be the sole arbitrator ("Arbitrator"), and any Party Appointed Arbitrators or their designees shall have no further duties involving the arbitration proceedings.
4. No person may serve as a Neutral in any arbitration under these Rules in which that person has any financial or personal interest in the result of the arbitration. Any person designated as a Neutral shall immediately disclose in writing to all Parties any circumstance likely to affect impartiality, including any bias or financial or personal interest in the outcome of the arbitration ("Bias Disclosure"). If any Party objects to the service of any Neutral after receipt of that Neutral's Bias Disclosure, such Neutral shall be replaced in the same manner in which that Neutral was selected.
5. The Arbitrator or Chair, as the case may be ("Arbitrator") shall fix the date, time and place for the hearing. The place of the hearing shall be within the Properties unless otherwise agreed by the Parties.
6. Any Party may be represented by an attorney or other authorized representative throughout the arbitration proceedings.
7. All persons who, in the judgment of the Arbitrator, have a direct interest in the arbitration are entitled to attend hearing.

8. There shall be no stenographic record of the proceedings.
9. The hearing shall be conducted in whatever manner will, in the Arbitrator's judgment, most fairly and expeditiously permit the full presentation of the evidence and arguments of the Parties.
10. The Parties may offer such evidence as is relevant and material to the Claim, and shall produce such additional evidence as the Arbitrator may deem necessary to an understanding and determination of the Claim. The Arbitrator shall be the sole judge of the relevance and materiality of any evidence offered, and conformity to the legal rules of evidence shall not be necessary. The Arbitrator shall be authorized, but not required, to administer oaths to witnesses.
11. The Arbitrator shall declare the hearings closed when satisfied the record is complete.
12. There will be no post hearing brief.
13. The Award shall be rendered immediately following the close of the hearing, if possible, and no later than 14 days from the close of the hearing, unless otherwise agreed by the Parties. The Award shall be in writing, shall be signed by the Arbitrator and acknowledged before a Notary Public. If the Arbitrator believes an opinion is necessary, it shall be in summary form.
14. If there is more than one arbitrator, all decisions of the Panel and the Award shall be by majority vote.
15. Each Party agrees to accept as legal delivery of the Award the deposit of a true copy in the mail addressed to the Party or its attorney at the address communicated to the Arbitrator at the hearing.

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