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J. LEE WARREN JR.  
REGISTER OF DEEDS  
CUMBERLAND CO., N.C.

NORTH CAROLINA

DECLARATION OF  
CONDOMINIUM FOR STERLING  
MANOR CONDOMINIUMS

CUMBERLAND COUNTY

HIGHLAND DEVELOPMENT PARTNERS LLC, a North Carolina limited liability company with its principal place of business in the County of Cumberland, State of North Carolina, (herein "Developer"), does hereby make, declare and establish this Declaration of Condominium as and for the plan of dwelling ownership of STERLING MANOR CONDOMINIUMS, being the property and improvements hereinafter described; and located generally at:

324 Glenburney Drive  
Fayetteville, NC 28303

I.  
ESTABLISHMENT OF CONDOMINIUM

Developer is the owner of the fee simple title to that certain real property situated in Fayetteville, Cumberland County, North Carolina, which property is more particularly described in Exhibit "A" - Phase I, attached hereto and incorporated herein by reference, and on which property there are to be constructed one (1) four-story building containing a total of twelve (12) condominium living units and their supporting facilities, areas designated for at least 12 parking spaces and other appurtenant improvements,(2) twelve garage parking places in the bottom floor, and (3) twelve (12) storage units located on bottom floor; and (4) twelve covered "carport" parking spaces located outside of four story building. The buildings are of wood frame construction. Developer does hereby submit the above described property and improvements to condominium ownership under the provisions of Chapter 47C of the General Statutes of North Carolina (North Carolina Condominium Act), and hereby declares the same to be a condominium to be known and identified as "Sterling Manor Condominiums." Hereinafter in this Declaration, "Sterling Manor Condominiums" is sometimes referred to as "Condominium."

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Developer intends, but is not obligated to expand Sterling Manor Condominiums, beyond the 12 Units in Phase 1, described above to include up to 1 additional phase with a presently contemplated maximum of 4 Units (Phase 2). It is presently contemplated that the total number of Units in all phases would not exceed 16 Units. Phase 2 if constructed would be located on the land described in Exhibit "A-1". The Property on which Phase 1 and Phase 2 would be constructed is known as the "Property." The building located on Phase 2 would be one "Quadruplex" building containing 4 condominium living units built in a similar exterior finishes and style to the four story building in Phase 1. The Quadruplex building would consist of four attached units, with garages.

II.

SURVEY AND DESCRIPTION OF IMPROVEMENTS

Referenced hereto and expressly made a part hereof as Exhibit "B" consisting of 8 page(s), as recorded in Condominium Book 6, Pages 163 through 170, Cumberland County Registry, is a survey of the land and graphic descriptions and plans of the improvements constituting the Condominium, identifying the Condominium Units and Common Areas and Facilities, and said terms are hereinafter defined, and their respective locations, approximate dimensions and principal building materials. Each Condominium Unit is identified by specific numerical designation on Exhibit "B" and no Unit bears the same designation as any other Condominium Unit.

III.

DEFINITIONS

The Condominium consists of Condominium Units and Common Area and Facilities as said terms are hereinafter defined:

- A. "Condominium Units" (alternately referred to as "Unit") as defined herein shall comprise the separate numerically identified Dwelling Units which are designated in Condominium Book as set out above, excluding all spaces and improvements lying:
  - (1) Beneath the wood subflooring material of all floors;
  - (2) Behind the interior sheetrock, wallboard or panel surfacing material of all perimeter walls, interior bearing walls and/or bearing partitions;
  - (3) Above the interior sheetrock, wallboard or panel surfacing material of the ceilings;

And further, excluding all pipes, ducts, wires, conduits and other facilities for the furnishing of utilities and other services to condominium units and Common Areas and Facilities up to and including the point of entry of such pipes, ducts, wires and conduits through the interior sheetrock, wallboard or panel surfacing material for walls and ceilings and subflooring surfacing referenced interior surfacing materials shall become a part of the respective Condominium Units at such point of entry. All exterior doors, window frames, panes and screens shall be part of the respective Condominium Units, provided, however, that the exterior decoration and painting of the exterior surface of such doors and window frames shall be the responsibility of the Sterling Manor Condominium.

- B. "Common Areas and Facilities", sometimes referred to herein as "Common Property" shall mean and comprise all of the real property, improvements and facilities of the Condominium other than the Condominium Units and all personal property held and maintained for the use and enjoyment of all Owners of Condominium Units.
- C. "Limited Common Areas" Certain portions of the Common Areas and Facilities are reserved for the use of a particular Condominium Unit or Units to exclusion of the other Units and are designated as Limited Common Areas and Facilities. Limited Common Areas and Facilities and the Condominium Units to which they are reserved are as follows:

As shown on Exhibit "B", the HVAC unit located on the roof of the building, and the water heaters located outside a Unit but serving that particular Unit are Limited Common Elements for that Unit. Walks, halls and balconies located in each building are reserved for the use of the Owners of Units in those buildings, their families, guests, invitees and lessees. Any decks, porches, balconies, patios or other fixtures designated to serve a single unit but located outside the Unit's boundaries are limited common elements allocated exclusively to that Unit, pursuant to N.C.G.S. §47C-2-102(4).

Each Condominium Unit will have a garage designated for use by that Unit Owner; such garage will also be a limited common area; also each Unit shall have a storage unit designated for use by that Unit Owner, and some Units will have a covered parking place/carport unit designated for use by that Unit, all of which shall be limited common elements.

- D. "Period of Declarant Control", means the period commencing on the date hereof and continuing until the earlier of (i) five (5) years after the date of the first conveyance of a unit other than a declarant; (ii) 120 days after conveyance of seventy-five percent (75%) of the Units (including any Units which may be created pursuant to special declarant rights) to a Unit Owner other than declarant; (iii) two years after a declarant has ceased to offer Units for sale in the ordinary course of business; (iv) two years after any development right to add new units

was last exercised, or (v) the date upon which declarant voluntarily surrenders control of the condominiums.

The terms "Association of Unit Owners", "Buildings", "Common Areas and Facilities", "Declaration", "Majority" or "Majority of Unit Owners", "Person", "Property", "Unit", or "Condominium Unit", "Unit Designation" and "Unit Owners", unless it is plainly evident from the context of this Declaration that a different meaning is intended, shall have the meaning set out in Sections 1-103 of Chapter 47C of the General Statutes of North Carolina, known as the North Carolina Condominium Act, as that statute exists as of the date of filing of this Declaration.

IV.

OWNERSHIP OF CONDOMINIUM UNITS AND  
APPURTENANT INTEREST IN COMMON PROPERTY

Each Condominium Unit shall be conveyed and treated as an individual property capable of independent use and fee simple ownership, and the Owner of each shall also own, as appurtenance to the ownership of each said Condominium Unit, an undivided interest in the Common Property. The undivided interest appurtenant to each Condominium Unit as the date of this Declaration is set out in Column I of Exhibit "C" attached hereto and made a part hereof. The proportional interest in the Common Property that is appurtenant to each Condominium Unit as shown in Exhibit shall be proportionate to the total number of Units in the Condominium. This shall be 1/12, or 8.33333% for each unit owned proportionate to the total number of Units in the Condominium. At this time this shall be 1/12 for each Unit owned. In the event Developer elects to add additional phases to the Condominium, Developer shall, in each instance, file an amendment to this Declaration stating that the percentage undivided interest in the Common Area appurtenant to each Unit then a part of the Condominium at the time of such filing is as shown in the appropriate column of Exhibit "C". The formula for determining the percentage undivided interest shall be 1 divided by the total number of units. Each unit shall have the same interest. Each unit Owner shall be deemed by the acceptance of the deed to a Condominium Unit to have consented to the powers of amendments previously or thereafter executed by Developer pursuant to this Article IV and to Article XXVII-B hereof. Except as provided herein, the percentage of undivided interest in the Common Property assigned to each Condominium Unit shall not be changed except when the unanimous consent of all of the Owners of all of the Condominium Units and with the consent of all of the Institutional Lenders, as defined in Article XXIX hereof, holding first mortgages of first deeds of trust on the Condominium Units.

V.

RESTRICTION AGAINST FURTHER SUBDIVISION OF  
CONDOMINIUM UNITS; SEPARATE CONVEYANCE OF APPURTENANT  
COMMON-PROPERTY PROHIBITED

No Condominium Unit may be divided or subdivided into smaller Unit or Units than as shown on Exhibit "B" hereto nor shall any Condominium Unit or portion thereof be added to or incorporated into any other Condominium Unit. The undivided interest in the Common Property declared to be an appurtenance to each Condominium Unit shall not be conveyed, devised, encumbered or otherwise dealt with separately from said Condominium Unit and the undivided interest in Common Property appurtenant to each Condominium Unit shall be deemed conveyed, devised, encumbered or otherwise included with the Condominium Unit even though such undivided interest is not expressly mentioned or described in the instrument conveying, devising, encumbering or otherwise dealing with such Condominium Unit. Any conveyance, mortgage or other instrument which purports to grant any right, interest or lien in, to or upon a Condominium Unit, shall be null, void and of no effect so far as the same purports to affect any interest in Common Property, unless the same purports to convey, devise, encumber or otherwise trade or deal with the entire Condominium Unit, which describes said Condominium Unit by the numerical designation assigned thereto in Exhibit "B" without limitation or exception, shall be deemed and construed to affect the entire Condominium Unit and its appurtenant undivided interest in the Common Property. Nothing herein contained shall be construed as limited or preventing ownership of any Condominium Unit and its appurtenant undivided interest in the Common Property by more than one person or entity as tenants-in-common, joint tenants, or as tenants by entirety.

#### VI.

#### THE CONDOMINIUM SUBJECT TO RESTRICTIONS

The Condominium Units, Common Property and Limited Common Areas shall be, and the same are hereby declared to be subject to the restrictions, easements, conditions, and covenants prescribed and established herein governing the use of said Condominium Units, Common Property and Limited Common Areas and setting forth the obligations and responsibilities incident to ownership of each Condominium Unit and its appurtenant undivided interest in the Common Property and said Condominium Units, Common Property and Limited Common Areas are further declared to be subject to the restrictions, easements, conditions, and limitations now of record affecting the land and improvements of the Condominiums.

#### VII.

#### PERPETUAL NON-EXCLUSIVE EASEMENT IN COMMON PROPERTY

The Common Property shall be, and the same is hereby declared to be subject to a perpetual non-exclusive easement in favor of all of the Owners of Condominium Units in the Condominium for their use and the use of their immediate families, guests and invitees, for all proper and normal purposes, and for the furnishing of services and facilities for which the same are reasonably intended, for the enjoyment of said Owners of Condominium Units. The Common Property shall be subject also, to an easement of ingress, egress, and regress in favor of

Developer, its representatives, employees, and designees for the purpose of construction of succeeding phases, as further defined in Article XI hereof. Notwithstanding anything above provided in this Article, Association, hereinafter, shall have the exclusive right to establish the rules and regulations pursuant to which the Owner of any Condominium Unit, his family, guests and invitees, may be entitled to use the Common Property, including the right to make permanent and temporary assignments of parking spaces, and to establish regulations concerning the use thereof.

VIII-A

EASEMENT FOR UNINTENTIONAL AND NON-NEGLIGENCE ENCROACHMENTS

In the event that any Condominium Unit shall encroach upon any Common Property, or any other Condominium Unit for any reason not caused by the purposeful or negligent act of the Condominium Unit Owner, or agents of such Owners, then an easement appurtenant to such Condominium Unit shall exist for the continuance of such encroachment upon the Common Property or upon a Condominium Unit for as long as such encroachments shall naturally exist; and in the event that any portion of the Common Property shall encroach upon any Condominium Unit, then as easement shall exist for the continuance of such encroachment of the Common Property upon any Condominium Unit for as long as such encroachment shall naturally remain.

VIII-B

EASEMENT AND INDEMNITY TO CITY OF FAYETTEVILLE AND PUBLIC WORKS COMMISSION

The City of Fayetteville and its Public Works commission shall not be responsible for damages which may result in the event of a rupture in water lines placed areas within then (10) feet of or beneath existing building improvements or from the exercise of rights contained in the easement duly recorded in Book \_\_\_\_, Page \_\_\_\_, Cumberland County Registry, as applied to water lines within ten (10) feet of improvements. Such rights shall include, but not be limited to, excavation in or near the building foundations for the purpose of repairing or replacing the water lines and/or laterals. It is further understood that the Public Works Commission will not be responsible for additional cost required to relocate the facilities.

IX.

RESTRAINT UPON SEPARATION AND PARTITION OF COMMON PROPERTY

Recognizing that the proper use of a Condominium Unit by an Owner or Owners is dependent upon the use and enjoyment of the Common Property in common with the Owners of

all other Condominium Units, and that it is in the interest of all owners that the ownership of the Common Property be retained in common by the Owners, it is hereby declared that the proportional undivided interest in the Common Property appurtenant to each Condominium Unit shall remain undivided and no Unit Owner shall bring or have any right to bring any action for partition or division.

## X.

ADMINISTRATION OF THE CONDOMINIUM BY  
STERLING MANOR HOMEOWNERS, INC.

To provide efficiently and effectively for the administration of the Condominium by the Owners of the Condominium Units, a non-profit North Carolina Corporation known as Sterling Manor Condominium Homeowners, Inc., (herein "Association") has been organized, and said corporation shall administer the operation and management of the Condominium and undertake and perform all acts and duties incident thereto in accordance with the terms of its Articles of Incorporation and Bylaws. A true copy of said bylaws and Articles of Incorporation are annexed hereto and expressly made a part hereof as Exhibits "D" and "E", respectively. The Owner or Owners of each Condominium Unit shall automatically become members of the Association upon acquiring an ownership interest in title to any Condominium Unit and its appurtenant undivided interest in Common Property, such membership shall terminate automatically upon the Owner or Owners being divested of such ownership may be divested. No person, firm or corporation holding any lien, mortgage or other encumbrance, to membership in the Association or to any of the rights or privileges of such membership. In the administration of the operation and management of the Condominium, the Association is hereby granted the authority and power to enforce the provisions of this Declaration, to levy and to collect assessments in the manner hereinafter provided, and to adopt, promulgate and enforce such rules and regulations governing the use of the Condominium Units and Common Property as its Board of Directors may deem to be in its best interest.

## XI.

RESIDENTIAL USE RESTRICTIONS APPLICABLE TO  
CONDOMINIUM UNITS

Each Condominium Unit is hereby restricted to residential use by its Owner, his immediate family, guests, invitees and lessees. The only pets permitted to dwell in a Unit are common household pets and further residents are limited to one (1) orderly dog or cat weighing less than 25 pounds. The Association has the right to make, and modify rules governing ownership of pets by a Unit Owner. Such rule shall include regulation of size and type of pets permitted. No pet shall be permitted to remain in a Unit if it is a nuisance to any Unit Owner, and must comply with any established pet rules and guidelines by the Association.

No Unit Owner may lease less than the entire Unit. Any lease or rental agreement for a Unit shall be in writing and for a period of at least one hundred eighty (180) days. Such leases shall provide that the terms of the lease are subject to the provisions of this Declaration, the Articles of Incorporation and Bylaws of the Association, and that any failure by the lessee to comply with the terms of such documents shall be in default under the terms of the lease. No Owner of any Condominium Unit shall permit the use of his Unit for transient hotel or commercial purposes. Corporate or partnership members, other than the Developer shall permit the use of a Condominium Unit owned by it only by its principal officers, directors or partners, or other guests or lessees. Such corporate or partnership member shall annually sign and deliver to the Association a written statement designating the name of the party (or parties) entitled to use such Condominium Unit, together with a written covenant of such party in favor of the Association whereby the party agrees to comply with the terms and provisions of this Declaration of Condominium and with the rules and regulations which may be promulgated by the Association from time to time and acknowledging that the party's right to use such Condominium Unit shall exist only so long as the corporation or partnership shall continue to be a member of the Association. Upon demand by the Association to any corporate or partnership member to remove a party for failure to comply with the terms and provisions of the Declaration of Condominium and/or the rules and regulations of the Association or for any other reason and corporate or partnership member shall forth cause such party to be removed, failing which, the Association, as agent of the Owner, take such action as it may deem appropriate to accomplish such removal, and all such action by the Association shall be at the cost and expense of the Owner who shall reimburse the Association therefore upon demand, together with such attorneys' fees as the Association may have incurred in the process of removal.

Anything in this Declaration to the contrary notwithstanding, Developer shall have the right to maintain a sales office and model units and to display advertising signs upon the Common Property during the period of Unit Sales. Such right shall terminate when all Units in all phases of the Condominium are sold. Developer, its representatives, employees and designees shall have an easement of ingress, egress and regress upon across the Common Property for construction of succeeding phases, as described in Article VII hereof, which easement shall terminate when all Units in all phases are completed and sold.

Declarant reserves the following special declarant rights for the entire Property, which shall be exercisable during the period of declarant control:

- (a) To complete any and all improvements indicated on the plats and plans;
- (b) To exercise any Development right reserved in this Declaration;
- (c) To construct and maintain any sales office, signs advertising the Condominium, management office or model in any of the units or on any of the Common Elements shown on the plat;
- (d) To use easements through the Common Elements for the purpose of making



improvements within the Condominium or within real estate which may be added to the Condominium:

- (e) To appoint and remove any Executive Board members during the period of declarant control;

Declarant reserves the following development rights for the entire Property and additional properties as described below during the period of Declarant control:

- (a) To create units, Common Elements, or Limited Common Elements within the Condominium; to alter the size of any unit, combine or merge two or more units, to subdivide units or convert units into Common Elements;
- (b) To add real estate to the Condominium, or
- (c) To withdraw real estate from a Condominium.

XII.

USE OF COMMON PROPERTY SUBJECT TO RULES OF ASSOCIATION

The use of Common Property, including the Limited Common Areas and Facilities, by Owner or Owners of all Condominium Units and all other parties authorized to use the same, shall be subject to such rules and regulations as may be prescribed and established governing such use, or which may hereafter prescribed and established by the Association.

XIII.

THE CONDOMINIUM TO BE USED FOR LAWFUL PURPOSES:  
RESTRICTION AGAINST NUISANCES

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

XIV.

RIGHT OF ENTRY INTO CONDOMINIUM UNITS IN EMERGENCIES

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

## XV.

## RIGHT OF ENTRY FOR MAINTENANCE OF COMMON PROPERTY

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

## XVI.

LIMITATION UPON RIGHT OF OWNERS TO ALTER AND MODIFY  
CONDOMINIUM UNITS; NO RIGHT TO ALTER COMMON PROPERTY

No owners of a Condominium Unit shall permit any structural modification or alteration to such Condominium Unit without first obtaining the written consent of the Association, any consent may be withheld in the event that a majority of the Board of Directors of the Association shall determine, in their sole discretion at such structural modifications or alterations would adversely affect or in any manner endanger the Condominium in part or in its entirety. Provided that the Board of Directors of the Association shall be deemed to have consented to the altering of the Unit's balcony or deck to a screen porch or sunroom, so long as such alterations are done according to the approved plans of the Developer, which plans are available from Developer.

The Association, through the Board of Directors (or its Architectural control committee), shall regulate the external design, appearance, use, location and maintenance of the Condominium and of improvements therein in such a manner so as to preserve and enhance values and to maintain a harmonious relationship among structures and the natural vegetation and topography. No owner shall cause any improvements, alteration, repairs or changes to be made on the exterior of the Condominium (including painting or other decoration, the installation of electrical wiring, television or radio antennae or any other objects or devices which may protrude through the walls or roof of the Condominium) or in any manner alter the other appearance of the exterior portion of any building without the written consent of the Association being first had and obtained. No Unit Owner shall cause any object to be fixed to the Common Property or to any Limited Common Area (including the location or construction of fences and the planting or growing of flowers, trees, shrubs, or any other vegetation) or in any manner

change the appearance of the Common Property or Limited Common Area without the written consent of the Association being first had and obtained.

Window Treatments- Patio Furniture: Furnishings shall be permitted on a Unit's patio or balcony, only after approval by the Association. In addition all windows treatments shall have a backing of white or off-white to provide uniformity in Condominium and shall be permitted only after approved by the Homeowners Association.

Any Unit Owner desiring to make improvements, alteration or change described above shall submit the plans and specifications therefore, showing the nature, kind, shape, height, materials, and location of the same, to the Board of Directors which shall evaluate such plans and specifications in light of the purpose of this Article as set forth above. As a condition to the granting of approval of any request made under this article, the Association may require that the Unit Owner requesting such change be liable for any cost of maintaining, repairing and insuring the approved alteration. If such condition is imposed, the Owner shall evidence his consent thereto by a written document in recordable form satisfactory to the Association. Thereafter, the Unit Owner, and any subsequent Owner of the Unit, by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree that the cost of maintaining, repairing and insuring such alteration shall be a part of the annual assessment or charge set forth in Article XXIV subject to the lien rights described in said Article.

#### XVII.

#### RIGHT OF ASSOCIATION TO ALTER AND IMPROVE COMMON PROPERTY AND ASSESSMENT THEREFORE

The Association shall have the right to make or cause to be made such alterations or improvements to Common Property (including the right to grant and establish upon, over and across the Common Property such easements as are necessary or desirable for providing service or utilities to the Units and the Common Property) which do not materially prejudice the rights of the Owner of any Condominium Unit in the use and enjoyment of his Condominium Unit, provided the making of such alterations and improvements are approved by the Board of Directors of the Association, and the cost of such alterations and improvements shall be common expenses to assessed and collected from all of the Owners of Condominium Units. However, where any alterations and improvements are exclusively or substantially for the benefit of the Owner or Owners of certain Condominium Unit or Units requesting the same, then the cost of making, maintaining, repairing and insuring such alterations or improvements shall be assessed against and collected solely from the Owner or Owners of the Condominium Unit or Units exclusively or substantially beneficial, the assessment to be levied in such proportion as may be determined by the Board of Directors of the Association.

#### XVIII.

MAINTENANCE AND REPAIR BY OWNERS OF  
CONDOMINIUM UNITS

The Owner of a Condominium Unit who has exclusive use of any Limited Common Area shall maintain such at his own expense. All doors, window frames, panes and screens are a part of the respective Condominium Units and shall be maintained by the respective Unit Owners. The owner of a Condominium Unit shall have responsibility to maintain its Unit, at its own expense. Each owner shall maintain its Unit and Limited Common Areas in a reasonable manner.

XIX.

MAINTENANCE AND REPAIR OF COMMON PROPERTY  
BY THE ASSOCIATION

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

XX.

OWNERSHIP MAINTENANCE AND REPAIR OF PRIVATE  
STREETS BY THE ASSOCIATION

The Association shall have ownership and, at its expense, shall be responsible for the maintenance, repair and replacement of all private streets within the property subject to this Declaration of Condominiums. This Declaration of Condominiums is hereby made subject to, and incorporates herein by reference, Chapter 25 of the Code of Ordinances of the City of Fayetteville, as it pertains to the establishment of private streets within the property subject to this Declaration of Condominiums.

## XXI.

## AUTHORITY TO PURCHASE INSURANCE

Insurance policies upon the Common Property, including Limited Common Areas and Facilities (except title insurance) shall be purchased by the Association as Trustees for the Condominium Unit Owners, for the benefit of the Condominium Unit Owners and their respective mortgages as their interests may appear, and shall provide for the issuance of certificates or mortgage endorsements to the holders of first mortgages on the Condominium Units or any of them, and if the companies writing such policies will agree, the policies shall provide that the insurer waives its rights of subrogation as to any claims against Condominium Unit Owners, the Association and their respective servants, agents and guests. Each Condominium Unit Owner may obtain insurance, at his own expense; affording coverage upon his Condominium Unit, his personal property and for his personal liability as may be permitted or required by law, but all such insurance shall contain the same waiver of subrogation as that referred to above if the same is available.

## XXII.

INSURANCE OVERAGE TO BE MAINTAINED: USE AND  
DISTRIBUTION OF INSURANCE AND CONDEMNATION PROCEEDS

- A. The following insurance coverage shall be maintained in full force and effect by the Association covering the operation and management of the Condominium Units and Common Property:
1. Casualty insurance covering the building and all improvements upon the land and all personal property included within the Property described in Exhibit "A" hereto or as it may be amended from time to time, except such personal property as may be owned by the Condominium Unit Owners, shall be procured in amount equal to 100% of the current replacement cost (exclusive of excavation, foundations, streets and parking facilities) as determined annually by the insurance company affording such coverage. Such policy shall contain an Agreed Amount Endorsement or an Inflation Guard Endorsement, if available. By the way of illustration and not of limitation, such casualty insurance shall cover fixtures, comprising a part of the building within each individual Condominium Unit (as that term is defined in Article III hereof) in accordance with the original condominium plans and specification. In determining the amount of coverage for such fixtures, installations or additions, the Board of Directors of the Association shall annually set the Landlord allowance for such items as carpeting, bathroom and kitchen, cabinets, wall covering, vinyl floor covering, ceramic tile, kitchen

appliances, bookshelves, etc., which were included in the original condominium plans and specifications. By the way of illustration and not of limitation such casualty insurance shall not cover furniture, furnishings or other household or personal property owned by, used by or in the care, custody or control of a Condominium Unit Owner (whether located within or without the Unit), or fixtures, installations or additions that are placed in an individual Condominium Unit by the Owner thereof at his expense. Such coverage shall afford protection against: (a) loss or damage by fire and other hazards covered by the standard extended coverage endorsement; (b) such other risks as from time to time customarily shall be covered with respect to buildings similar in construction, location and use, including but not limited to vandalism and malicious mischief.

2. A comprehensive policy of public liability insurance insuring the Association in an amount no less than One Million Dollars (\$1,000,000.00) for claims for personal injury and/or property damage arising out of a single occurrence, such coverage to include protection against liability for non-owned and hired automobiles and liability for property of others, and, if available, may include coverage for water damage.
3. The Board of Directors shall maintain fidelity coverage against dishonest acts by the Association's officers, directors, trustees and employees, and all others who are responsible for handling funds of the Association. If the Association employs a professional property management person or firm to manage the Association and to receive and disburse the monies of the Association, then such professional management person or firm shall have adequate fidelity coverage against dishonest acts and the existence of such coverage shall satisfy the requirement of the paragraph XXI-A- (3). If the Association elects to manage its own affairs and directly receive and disburse its own funds (or, if in addition to professional management, the officers or directors of the Association can and do directly receive or disburse the monies of the Association), then the Board of Directors shall provide the coverage set forth in this paragraph. Any such fidelity bonds shall name the Association as an obligee; shall be written in an amount equal to at least 150% of the estimated annual operating expenses of the Association, including reserves and accumulated reserves; shall contain waivers of any defense based on the exclusion of persons who serve without compensation from any definition of "employee" or similar expression; and shall provide that they may not be cancelled or substantially modified (including cancellation for non-payment of premium) without at least thirty (30) days prior to written notice to the Association and to any Institutional Lender who has given the notice required under Article XXX of this Declaration.

4. All liability insurance shall contain cross-liability endorsements to cover liabilities of the Condominium Unit Owners as a group to a Condominium Unit Owner.
- B. Premiums upon insurance policies purchased by the Association shall be paid by the Association as Common Expenses to be assessed and collected from all of the Owners of Condominium Units.
- C. All insurance policies purchased by the Association and all condemnation awards attributable the Common Property shall be for the benefit of the Association and the Condominium Unit Owners and their mortgages, as their respective interests may appear, and shall provide that all proceeds payable as a result of casualty losses and condemnation shall be paid to the Association. The Association shall hold such proceeds in trust for the benefit of Association, the Condominium Unit Owners and their respective mortgages in the following shares:
1. Proceeds due to damage to Common Property: in undivided shares for each Condominium Unit Owner and his mortgagee, if any, which shares as to each Condominium Unit are shown on Exhibit "C" attached hereto.
  2. Proceeds due to damages to Condominium that are to be restored: for the Owners of damaged Condominium Unit Owners, the share of each being set forth in Exhibit "C".
    - a. Partial destruction when the Condominium is to be restored: for the Owners of damaged Condominium Unit Owners, the share of each being set forth in Exhibit "C".
    - b. Total destruction shall be deemed to mean destruction which renders less than two-thirds (2/3) or more of the Condominium Units untenable. In the event of total destruction, the Common Property shall not be reconstructed or repaired, if, at a meeting which shall be called within thirty (30) days after such adjustment, Condominium Unit Owner who in the aggregate own three-fourths (3/4) or more of the Condominium Units vote against reconstruction or repair.
- D. In the event a mortgagee endorsement has been issued as to a Condominium Unit, the share of the Condominium Unit Owner shall be held for the mortgagee and the Condominium Unit Owner as their interests may appear.
- E. Proceeds of insurance policies received by the Association shall be distributed to or for the benefit or the beneficial Condominium Unit Owners in the following manner:

1. If the damage for which the proceeds were paid is to be repaired or reconstructed, the proceeds shall be paid to defray the costs thereof as elsewhere provided. Any proceeds remaining after defraying such costs shall be distributed to the beneficial Condominium Unit Owners, all remittances to Condominium Unit Owners and their mortgages being payable jointly to them. This is a covenant for the benefit of any mortgagee of a Condominium Unit and may be enforced by him.

## XXIII

RECONSTRUCTION OR REPAIR OF CASUALTY DAMAGE;  
DAMAGE TO COMMON PROPERTY: DAMAGE TO  
CONDOMINIUM UNITS

- A. If any part of the Common property be damaged by casualty, the determination of whether or not to reconstruct or repair it shall be made as follows:
  1. Partial destruction shall be deemed to mean destruction which renders less than two-thirds (2/3) of the Condominium Units untenable. In the event of partial destruction, the Common Property shall be reconstructed or repaired unless this Declaration is terminated by the unanimous vote of all the Condominium Unit Owners at a meeting of the members of the Association called and held prior to commencement of such reconstruction or repair.
  2. Total destruction shall be deemed to mean destruction, which renders two thirds (2/3) or more of the Condominium Units untenable. In the event of total destruction, the Common Property shall not be reconstructed or repaired if, at a meeting which shall be called within thirty (30) days after the occurrence of the casualty, or if by such date the insurance loss has not been finally adjusted, then within thirty (30) days after such adjustment, Condominium Unit Owners who in the aggregate own three-fourths (3/4) or more of the Condominium Units vote against reconstruction or repair.
- B. If the damage is only to these parts of one or more Condominium Units for which the responsibility for maintenance and repair is that of Condominium Unit Owner, such Unit Owner shall be responsible for reconstruction and repair after casualty of condemnation. In all other instances, the responsibility of reconstruction and repair after casualty or condemnation shall be that of Association as follows:
  1. Immediately after the casualty or condemnation causing damage to property for which the Association has the responsibility for maintenance and repair, the Association shall obtain reliable and detailed estimates of



the cost to place the damaged property in conditions good as that before the casualty or condemnation. Such costs may include professional fees and premiums for such bonds as the Board of Director; deems necessary or appropriate.

2. When the damage is to both Common Property and Condominium Units or to Common Property only, the insurance or condemnation proceeds shall be payable to the Association and shall be applied first to the cost of repairing the Common Property and the balance to the Condominium Units.
- C. Each Condominium Unit Owner shall be deemed to have delegated to the Board of Directors of the Association his right to adjust with insurance companies all losses under policies purchased by the Association and to negotiate with governmental authorities any condemnation claims.

XXIV.

ASSOCIATION TO MAINTAIN REGISTER  
OF OWNERS AND MORTGAGEES

The Association shall at all times maintain a Register setting forth the names of the Owners of all the Condominium Units. In the event of the sale or transfer of any Condominium Unit to a third party, the purchaser or transferee shall notify the Association in writing of his interest in such Condominium Unit, together with such recording information as shall be pertinent to identify the instrument by which such purchaser or transferee has acquired his interest in such Condominium Unit, together with such recording information as shall be pertinent to identify the instrument by which such purchaser or transferee has acquired his interest in any Condominium Unit. Further, the Owner of each Condominium Unit shall notify the Association of the names of the parties holding any mortgagee or mortgages on any Condominium Unit, the amount of such mortgage or mortgages and the recording information, which shall be pertinent to identify the mortgage or mortgages. The holder or any mortgage or mortgages upon any Condominium Unit may, if he so desires, notify the Association of the existence of any mortgage or mortgages held by such party on any Condominium Unit, and upon receipt of such notice, the Association shall register in its records all pertinent information relating thereof.

XXV.

ASSESSMENT: LIABILITY, LIEN AND ENFORCEMENT

The Association is given the authority to administer the operation and management of the Condominium, it being recognized that the delegation of such duties to one entity is in the best interest of the Owners of all Condominium Units. To administer properly the operation and

management of the Condominium, the Association will incur for the mutual benefit of all of the Owners of Condominium Units, costs and expenses which are sometimes herein referred to as "Common Expense". To provide the funds necessary for such proper operation, management and capital improvement, the Association has heretofore been granted the right to make levy and collect assessments and fines against the Unit Owners and their Condominium Units. In furtherance of this grant of authority to Association to make, levy and collect assessment and fines to pay the costs and expenses for the operation, management of and capital improvements to the Condominium, the following provisions shall be operative and binding upon the Owners of all Condominium Units.

- A. Unless specifically otherwise provided for in this Declaration of Condominium, all assessments made by the Association shall be in such an amount that any assessment levied against a Unit Owner and his Condominium Unit shall bear the same ratio to the total undivided interest in Common Property appurtenant to all Condominium Units as shown as Exhibit "C" attached hereto.
- B. Assessments provided for herein should be payable in monthly installments as determined by the Board of Directors of the Association. Such assessments shall commence for each Unit on the first day of the first month following the recordation of this Declaration in the Cumberland County Registry.
- C. In addition to annual assessment authorized above, the Board of Directors may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, whole or in part, the cost of any insurance premiums for common areas, construction, reconstruction, repair or replacement of the Common Areas, including fixtures and personal property related thereto provided that any such assessment shall have the assent of Unit Owners owning two-thirds (2/3) of the Common Areas and Facilities who are voting in person or by proxy at a meeting duly called for such purposes.
- D. In order to insure that the Association will have sufficient monies available to meet operational needs during the initial months of the Condominium's existence, the Association had established a Working Capital Fund. At the time of the closing of the first sale of each Unit, the purchaser thereof shall pay into such Fund an amount equal to two-twelfths (2/12ths) of the current annual assessment established by the Association. No such payments made into the working Capital Fund shall be considered advance or current payment of regular assessments. All monies paid into the Working Capital Fund shall be held and administered by the Association in accordance with the terms of this Declaration and the Bylaws.
- E. The Board of Directors of the Association shall establish an Annual Budget in the initial year of operation of the Condominium; the fiscal year shall commence with the closing of the sale of the first Condominium Unit. Such budget shall project all expenses for the forthcoming year which may be required for the proper

operation, management and maintenance of the Condominium, including a reasonable allowance for contingencies and reserves, and the budget shall take into account projected anticipated income which is to be applied in reduction of the amounts required to be collected as an assessment each year. The Board of Directors shall keep separate, in accordance with paragraph "G" hereof, items relating to operation and maintenance from items relating to capital improvements. Upon adoption of such Annual Budget by the Board of Directors of the Association, copies of said Budget shall be delivered to each Owner of a Condominium Unit and the assessment for said year shall be established based upon such Budget, although the delivery of a copy of said Budget to each Owner shall not affect the liability of any owner for such assessment.

- F. Until December 31 of the year in which the first Unit is conveyed to an Owner, the maximum annual assessment shall be Two Thousand Three Hundred and Forty Dollars & No/100 (\$2,340.00) per Unit. From and after January 1 of the year immediately following the conveyance of the first Unit to an Owner, the maximum annual assessment may be increased each year not more than five percent (5%) by the Board of Directors. Any increase of more than five percent (5%) over the previous year's assessment requires a vote of the Unit Owners owning two-thirds (2/3rds) of the Common areas and Facilities who are voting in person or by proxy, at a meeting duly called for such purpose.
- G. The Board of Directors of the Association, in establishing the Annual Budget for operation, management and maintenance of the Condominium, shall designate therein a sum to be collected and maintained as a reserve fund for replacement of and capital improvements to the Common Property (Capital Improvement Fund). This Fund shall be for the purpose of enabling the Association to replace structural elements and mechanical equipment constitution a part of the Common Property, as well as the replacement of portions of the Common Property. The amount to be allocated to the Capital Improvement Fund shall be established by said Board of Directors as to collect and maintain a sum reasonably necessary to anticipate the need for replacement of Common Property. The amount collected for the Capital Improvement Fund may be maintained in a separate account by the Association and such monies shall be used only to make capital improvements to Common Property. Any interest earned on monies in the Capital Improvement Fund may, in the discretion of the Board of Directors of the Association, be expended for current operation and maintenance. Each Unit Owner shall be deemed to own a portion of the Capital Improvement Fund equal to his proportionate interest in the Common Property as shown on Exhibit "C" and the Association shall annually notify each Unit Owner of the amount of his balance in the Capital Improvement Account; however, such balance shall not be subject to withdrawal by a Unit Owner.

- H. All monies collected by the Association shall be treated as the separate property of the Association, and such monies may be applied by the Association to the payment of any expense of operating and managing the Condominium, or to the proper undertaking of all acts and duties imposed upon it by virtue of this Declaration of Condominium, the Articles of Incorporation and the Bylaws of the Association. As monies for any assessment are paid unto the Association by any Owner of a Condominium Unit, the same may be co-mingled with monies paid to the Association by the other Owners of Condominium Units. Although all funds and common surplus, including other assets of the Association, and any increments thereto or profits derived thereof or from the leasing or use of Common Property, shall be held for the benefit of the members of the Association, no member of the Association shall have the right to assign, hypothecate, pledge or in any manner transfer his membership interest therein, except as an appurtenance to his Condominium Unit. When the Owner of a Condominium Unit shall cease to be a member of the Association by reason of his divestment of ownership of such Condominium Unit, by whatever means, the Association shall not be required to account to such Owner for any share of the funds or assets of the Association, or which may have been paid to the Association by such Owner, as all monies which any Owner has paid to the Association shall be and constitute an asset of the Association which may be used in the operation and management of the Condominium.
- I. The Association shall have the right from time to time to levy fines against Unit Owners who violate the rules, regulations and restrictive Covenants, in such amount as deemed necessary to enforce said rule, regulation and restrictive covenant. The Association shall publish and maintain at its office a schedule of fines to be levied in accordance with this Declaration.
- J. The payment of any assessment or installment thereof shall be in default if such assessment or installment is not paid to the Association within thirty (30) days of the due date for such payment. When in default, the delinquent assessment or delinquent installment thereof due to the Association shall bear interest at twelve percent (12%) per annum allowed by VA until such delinquent assessment or installment thereof, and all interest due thereof, has been paid in full to the Association in the State of North Carolina.
- K. The Owners or Owners of each Condominium Unit shall be personally liable, jointly and severally, to the association for the payment of all assessments, regular or special, which may be levied by the Association against such Condominium Unit while such party or parties are Owner or Owners of a Condominium Unit. In the event that any Unit Owner or Owners are in default in payment of any assessment or installment thereof owed to the Association, such Unit Owner or Owners shall be personally liable, jointly and severally, for interest on such delinquent assessment or installment thereof as above provided, and for all costs

of collecting such assessment or installment thereof and interest thereon, including a reasonable attorney's fee whether suit be brought or not.

- L. No Owner of a Condominium Unit may exempt himself from liability for any assessment levied against him or his Condominium Unit by waiver of the use of enjoyment of any of the Common Property, or by abandonment of the Condominium Unit or in any other way.
- M. Recognizing that proper operation and management of the Condominium requires the continuing payment of costs and expenses therefore, and that such proper operation and management results in benefit to all of the Owners of Condominium Units, and that the payment of such common expenses represented by the assessment levied and collected by the Association is necessary in order to preserve and protect the investment of each Unit Owner, the Association is hereby granted a lien upon each Condominium Unit and its appurtenant undivided interest in Common Property, which lien shall secure and does secure the monies due for all assessments now or hereafter levied against the Owner of each such Condominium Unit, which lien shall secure and does secure the monies due for all assessments now or hereafter levied against the Owner of each such Condominium Unit, which lien shall also secure interest if any, which may be due on the amount of any delinquent assessments owing of the Association and, which lien shall also secure all costs and expenses, including a reasonable attorney's fee, which may be incurred by the Association in enforcing this lien upon said Condominium Unit and its appurtenant undivided interest in Common Property, which lien shall secure and does secure the monies due for all assessments now or hereafter levied against the Owner of each such Condominium Unit, which lien shall also secure interest if any, which may be due on the amount of any delinquent assessments owing to the Association and, which lien shall also secure all costs and expenses, including a reasonable attorney's fee, which may be incurred by the Association in enforcing this lien upon said Condominium Unit from date on which the payment of any assessment or installment thereof became delinquent, and shall be entitled to the appointment of a Receiver for said Condominium Unit. The lien granted to the Association shall further secure such advances for taxes and payments on account of superior mortgages, liens or encumbrances which may be required to be advanced by the Association shall further be entitled to interest at twelve percent (12%) per annum allowed by VA on any such advances made for such purpose. All persons, firms or corporations who shall acquire, by whatever means, any interest in the ownership of any Condominium Unit, or who may be given or acquire a mortgage, lien or other encumbrance thereof, are hereby placed on notice of the lien rights granted to the Association, and shall acquire such interest in any Condominium Unit expressly subject to such lien rights.

- N. The lien herein granted unto the Association shall be enforceable from and after the time of recording a claim or lien in the Public Records of Cumberland County, North Carolina which claim shall state the description of the Condominium Unit encumbered thereby, the name of the record owner, the amount due and the date when due. The claim of lien shall be recordable any time after default and the lien shall continue in effect until all sums secured by said lien as herein provided shall have been fully paid. Such claims of lien shall include only assessments which are due and payable when the claim of the lien is recorded, plus interest, costs, attorney's fees, advances to pay taxes and prior encumbrances and interest thereon, all as above provided. Such claims of lien shall be signed and verified by an officer or agent of the Association. Upon full payment of all sums secured by such claim of lien, the same shall be satisfied or recorded.

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

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

In the event that a Condominium Unit is to be leased, sold or mortgaged at the time when payment of any assessment against the Owner of said Condominium Unit and such Condominium Unit due to the Association shall be in default (whether or not a claim of lien has been recorded by the Association), then the rent, proceeds of such purchase or mortgage proceeds shall be applied by the

lessee or purchaser first to payment of any then delinquent assessment or installments thereof due to the Association before the payment of any rent, proceeds of purchase to the Owner of any Condominium Unit who is responsible for payment of such delinquent assessment.

In any voluntary conveyance of a Condominium Unit, the Purchaser thereof shall be jointly and severally liable with Seller for all unpaid assessments against Seller made prior to the time of such voluntary conveyance, without prejudice to the rights of the Purchaser to recover from Seller the amounts paid by Purchaser therefore.

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

XXVI.

COMMON SURPLUS

“Common Surplus”, meaning all funds and other assets of the Association (including excess of receipts of the Association, including but not limited to assessments, rent, profits and revenues from whatever source) over amount of the Common Expense, shall be owned by the Owners of all Condominium Units in the same proportion that the undivided interest in Common Property appurtenant to all Condominium Units; provided, however, that said Common surplus shall be held by the Association in the manner prescribed in, and subject to, the terms, provisions and conditions of this Declaration, imposing certain limitations and restrictions upon the use and distribution thereof. Except for distribution of any insurance indemnity herein provided, or upon termination of the Condominium, any attribution or distribution of Common Surplus which may be made from time to time shall be made to the then Owners of Condominium Units in accordance with their percentage interest in Common Surplus as declared herein.

XXVII.

TERMINATION

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

- A. The termination of the Condominium may be affected only by the unanimous agreement of all Condominium Unit Owners expressed in an instrument to that effect duly recorded; and provided, that the holders of all liens affecting any of

the Condominium Units consent thereto, or agree, in either case by instrument duly recorded, that their liens be transferred to the percentage of the undivided interest of the Condominium Unit Owner in the Property as provided in subparagraph "C" below. The termination shall become effective when such Agreement has been recorded in the public records of Cumberland County, North Carolina.

- B. If it is determined in the manner elsewhere provided that the Condominium shall not be reconstructed after casualty, the Condominium plan or ownership shall be terminated and the Declaration of Condominium revoked. The determination not to reconstruct after casualty shall be evidenced by a Certificate of the Association certifying as to the facts affecting the termination, which Certificate shall become effective upon being recorded in the public records of Cumberland County, North Carolina.
- C. After termination of the Condominium, the Condominium Unit Owners shall own the Property as tenants in common in undivided shares and the holders of mortgages and liens against the Condominium Unit or Units formerly owned by such Condominium Unit Owners shall have mortgages and liens upon the respective undivided share or interest owned as tenants in common shall be that percentage of the undivided interest in the Common Area and Facilities previously owned by each Unit Owner. All funds held by the Association and insurance proceeds, if any, shall be continue to be held for the Unit Owners in the same proportion. The costs incurred by the Association in connection with the termination shall be a Common Expense.
- D. Following termination, the property shall be subject to an action for portion at the suit of any Condominium Unit Owner and upon the express agreement of all Unit Owners affected. If the Board of Directors determines by not less than a three-fourths (3/4th) vote to accept an offer for the sale of the property, and each Unit Owner affected expressly agrees to the sale, each Condominium Unit Owner shall execute such deeds and other documents reasonably required to effect such sale at such times and in such form as the Board of Directors directs. In such event, any action for partition or other division of the property shall be held in abeyance pending such other sale, and upon the consummation thereof shall be discontinued by all parties thereof.

#### XXVII.

#### AMENDMENT OF DECLARATION OF CONDOMINIUM

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



- A. An Amendment or Amendments to this Declaration of Condominium may be proposed by the Board of Directors of the Association acting upon a vote of a majority of the Directors, or by the members of the Association owning a majority of the Condominium Units, whether meeting as members or by instrument in writing signed by them. Upon any Amendment or Amendments to this Declaration of Condominium being proposed by said Board of Directors or members, such proposed Amendment or Amendments shall be transmitted to the President of the Association, or other officer of the Association in the absence of the President, who shall thereupon call a Special Meeting of the Members of the Association for a date not sooner than twenty (20) days nor later than sixty (60) days from receipt by him of the proposed Amendment or Amendments. It shall be the duty of the Secretary to give each member written or printed notice of such special Meeting, stating the time and place thereof, and reciting the proposed Amendment or Amendments in reasonably detailed form, which notice shall be mailed not less than ten (10) days not more than thirty (30) days before the date set for such Special Meeting. If mailed, such notice shall be deemed to be properly given when deposited in the United States Mail addressed to the member at his Post Office address as it appears on the records of the Association, the postage thereon prepaid. Any member, may, by written waiver of notice signed by such member, waive such notice, and such waiver, when filed in the records of the Association, whether before or after the holding of the meeting shall be deemed equivalent to the giving of notice to such member. At the meeting, the Amendment or Amendments proposed must be approved by an affirmative vote of the members owning Units in the Condominium in order for such Amendment or Amendments to become effective. During the twenty-year period beginning with the date of Declaration, an affirmative vote of Unit Owners owning ninety percent (90%) of the undivided interest in the Common Areas and Facilities shall be required to amend this Declaration. From and after the expiration of said twenty-year period, an affirmative vote of Unit Owners in person or by proxy in a meeting duly called, owning seventy-five percent (75%) of the undivided interest in the Common Areas and Facilities shall be required. Upon adoption such Amendment or Amendments of this Declaration of Condominium shall be transcribed and certified by the President and Secretary of the Association having been duly adopted. The original or an executed copy of such Amendment or Amendments, so certified and executed with the same formalities as a Deed, shall be recorded in the Public Records of Cumberland County, North Carolina, within ten (10) days from the date on which the same became effective, such Amendment or Amendments to specifically refer to the recording date identifying the Declaration of Condominium. Thereafter, a copy of said Amendment or Amendments in the form in which the same were placed of record by the officer of the Association shall be delivered to the Owners of all Condominium Units, but delivery of a copy thereof shall not be a condition precedent of the effectiveness of such Amendment or Amendments. At any meeting held to consider such Amendment or Amendments, the written vote of any of any member of the

Association shall be recognized if such member is not in attendance at such meeting or represented there or by proxy, provided such written notice is delivered to the Secretary of the Association prior to such meeting or at such meeting.

- B. Developer shall have the right to file an Amendment to this Declaration at any time and from time to time prior to December 31, 2008, without the further consent of the Unit Owners, to incorporate into the Condominium (1) any and all of the additional land described in Exhibit "A-1", Phases II and (2) the four Unit Quadruplex to be constructed on the land described in Exhibit "A-1", Phases II, respectively. In the event this Declaration is so amended, the terms "Condominium" and "Property" as used herein shall be deemed to mean and include the property described in Exhibit "A-1", Phases II as the case may be and all improvements and structures now or hereafter placed by Developer thereon, all easements, rights and appurtenances thereto, and all articles of personal property provided by Developer and intended for use in connection therewith. Upon any such Amendment that includes the land and additional Units in Phases II, the undivided interest appurtenant to each Condominium Unit will change and shall be as set out in the appropriate column of Exhibit "C". The materials used in the construction of any additional Units in Phases II shall be of comparable quality as those used in the original 12 Units, the layout, size and architectural style of the additional Units shall be substantially the same as and compatible with the original Units, and the Units will be substantially completed prior to being incorporated into the Condominium. No amendment made by Developer in accordance with this paragraph shall divest as Owner of any portion of his dwelling Unit without the consent of such Owner and no such Amendment shall materially alter the plan of development set forth herein without the consent of all Owners affected thereby. Each Unit Owner shall be deemed, by his acceptance of a deed to a Condominium Unit, to have consented to the powers of Amendment therein reserved by Developer and to any Amendments previously or thereafter executed by Developer pursuant thereto. Each Unit Owner and each Institutional Lender shall further be deemed by the Owner's acceptance of a deed to a Condominium Unit, to have appointed Developer their respective Attorney-in-Fact to give, execute and record the consent of said Owner and said Institutional Lender to any and all Amendments to this Declaration which Developer may wish to execute pursuant to the powers herein reserved.
- C. Except as expressly set forth in this Declaration, no alteration in the percentage of ownership in Common Property appurtenant to each Condominium Unit, or alteration of the basis for sharing Common Expenses and other apportionment of assessment which may be levied by the Association in accordance with the provisions hereof, or alteration of basis of ownership of Common Surplus, shall be made without prior written consent of all of the Owners of all Condominium

Units and all of the Institutional Lender holding first mortgages or first deeds of trust on the Condominium Units.

- D. No material alteration, Amendment or modification of this Declaration, the Articles of Incorporation or By-Laws of the Association shall become effective without the prior written consent, of Institutional Lenders (as defined in Article XXIX) holding first mortgage loans on Units representing at least fifty-one percent (51%) of the votes in the Association being first had and obtained. Any change to the provisions of this Declaration, the Articles of Incorporation or By-Laws that affects any of the following shall be deemed material: voting rights, assessment, assessment liens, or subordination or assessment liens, reserves for maintenance, repair and replacement of Common Areas; responsibility for maintenance and repairs; reallocation of interests in the Common Areas of Limited Common Areas, or rights to their use; boundaries of any Unit; convertibility of Units into Common Areas or vice versa; expansion or contraction of the Condominium, or the addition, annexation or withdrawal of property to or from the Condominium; insurance or fidelity bonds; leasing of Units; imposition of any restrictions on a Unit Owner's right to sell or transfer his or her Unit; a decision by the Owners association to establish self management; restoration or repair of the Condominium; any provisions expressly benefit Institutional Lenders.
- E. No alteration, Amendment or modification of the rights and privileges granted and reserved herein favor of Developer shall be made without the written consent of said part being first had and obtained.
- F. The Condominium Regime may not be amended or merged with a successor regime without the prior approval of the Department of Veterans Affairs.

#### XXIX.

#### REMEDIES IN EVENT OF DEFAULT

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

- A. Failure to comply with any of the terms of the Declaration of Condominium or other restrictions and regulations contained in the Articles of Incorporation or By-laws of the Association, or which may be adopted pursuant thereto, or failure to pay any fine or assessment shall be grounds for relief including without limitation an action to recover sums due to damages, injunction relief, foreclosure of lien, or

any combination thereof. Such relief may be sought by the Association or, if appropriate, by an aggrieved Unit Owner.

- B. Each Unit Owner shall be liable for the expense of any maintenance, repair or replacement rendered necessary by his act, neglect or carelessness, or by that of any member of his family, or his or their guests, employees, agents or lessees, but only to the extent that such expense is not met by the proceeds of insurance carried by the Association. Such liability shall include any increase in fire insurance rates occasioned by use, misuse, occupancy or abandonment of a Condominium Unit or its appurtenances. Nothing herein contained, however, shall be construed so as to modify any waiver by insurance companies of rights of subrogation.
- C. In any proceeding arising because of an alleged default by a Unit Owner, the Association, if successful, shall be entitled to recover the costs of the proceeding and such reasonable attorneys' fees as may be determined by the court, but in no event shall any Unit Owner be entitled to such attorney's fees.
- D. The failure of the Association or any Unit Owner to enforce any right, provision, covenant or condition which may be granted by this Declaration of Condominium or the other above-mentioned documents shall not constitute a waiver of the right of the Association or of the Unit Owner to enforce such right, provision, covenant or condition in the future.
- E. All rights, remedies and privileges granted to the Association or the Owner or Owners of a Condominium Unit, pursuant to any terms, provisions, covenants or conditions of the Declaration of Condominium or other above-mentioned documents, shall be deemed to be cumulative, and the exercise of any one or more shall not be deemed to constitute an election of remedies, nor shall it preclude the party thus exercising the same from exercising such other and additional rights, remedies or privileges as may be available to such party at law or in equity.
- F. The failure of Developer to enforce any right, privilege, covenant or condition which may be granted to it by this Declaration of Condominium or other above-mentioned document shall not constitute a waiver of the right of Developer to thereafter enforce such right, provision, covenant or conditions in the future.
- G. The failure of an Institutional Lender or Institutional Lenders, as said term in herein defined, to enforce any right, provisions, privilege, covenant or condition which may be granted to it or them by this Declaration of Condominium or other above mentioned documents, shall not constitute a waiver of the right of said party or parties to thereafter enforce such right, privilege, covenant or condition in the future.

## XXX.

RIGHTS RESERVED UNTO INSTITUTIONAL LENDERS:  
RIGHTS RESERVED UNTO THE VETERANS ADMINISTRATION

- A. "Institutional Lender" or "Institutional Lenders", as the terms are herein, shall mean and refer to banks, savings and loan associations, insurance companies, other firms or entities customarily affording loans secured by first liens on residences, the Veterans Administration, the Federal Housing Administration and eligible insurers and governmental guarantors. In addition to any other rights set forth in this Declaration, so long as any Institutional Lender or Institutional Lenders shall hold any first mortgage upon any Condominium Unit or Units, or shall be the owner of any Condominium Unit or Units, such Institutional Lender or Institutional Lenders shall have the following rights:
1. To approve the company or companies with whom casualty insurance is placed, and to be notified of any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association.
  2. To examine, at reasonable times and upon reasonable notice, the books and records of the Association and to be furnished at least one copy of the annual financial statement and report of the Association, prepared by a certified public accountant designated by the Association, such financial statement and report to be furnished by April 30<sup>th</sup> of each calendar year.
  3. To be given by the Association of the Call of any meeting of the membership to be held for the purpose of considering: (1) any proposed Amendment to this Declaration of Condominium, or the Articles of Incorporation and Bylaws of the Association; (2) the proposed termination or abandonment of the Condominium; (3) the effectuation of any decision to terminate professional management of the Association and assume self-management by the Association. Such notice shall state the nature of the Amendment or action being proposed.
  4. To be given notice of any delinquency in the payment of any assessment or charge (which delinquency remains uncured for a period of sixty (60) days) by any Owner owning a Condominium Unit encumbered by a mortgage hold by the Institutional Lender or Institutional Lenders, such notice to be given in writing and to be sent to the principal office of such Institutional Lender or Institutional Lenders, or to the place which it or they may designate in writing.

5. To be given notice of any condemnation loss or casualty loss, which affects a material portion of the Common Areas or a material portion of any Unit. Whenever any Institutional Lender or Institutional Lenders desire the provisions of this Article to be applicable to it, it shall serve or cause to be served written notice of such fact upon the Association by Registered Mail or Certified Mail addressed to the Association and sent to its address stated herein, identifying the Condominium Unit or Units upon which any such Institutional Lender or Institutional Lenders hold any mortgage or mortgages, or identifying any Condominium Units owed by them, or any of them, together with sufficient pertinent facts to identify any mortgage or mortgages which may be held by it or them, and which notice shall designate the place to which notices are to be given by the Association to such Institutional Lender or Institutional Lenders.
- B. So long as Developer retains the right to appoint a majority of the Board of Directors of the Association as set forth in Article XXX thereof, the following actions will require the prior approval of the Veterans Administration: Amendment of Declaration, including Amendments under Article XXVII-B to add additional phases to the Condominium; and dedication of any Common Areas and Facilities.

### XXXI.

#### RIGHT OF DEVELOPER TO REPRESENTATION ON BOARD OF DIRECTORS OF THE ASSOCIATION

For a period ending one hundred twenty (120) days after Developer ceases to own twenty-five (25%) or more of the Units in the Condominium, but in any event no longer than five (5) years from the date of recording of the first conveyance of a Unit sold in Phase I of the Condominium, Developer shall have the right to designate and select a majority of the persons who shall serve as members of each Board of Directors of the Association.

In the event of dissolution of Developer at a time when it is the Owner of Condominium Unit, then the rights of the Developer shall pass to and may be exercised by its successor receiving ownership of any such Condominium Unit in dissolution.

Whenever Developer shall be entitled to designate and select any person or persons to serve on any Board of Directors of the Association, the manner in which such person or persons shall be designated shall be as provided by the Articles of Incorporation and/or Bylaws of the Association, and Developer shall have the right to remove any person or persons selected by it to act and serve on said Board of Directors and/or replace such person or persons with another person or other persons to act and serve in the place of any Director or Directors so removed for the remainder of the unexpired term of any Director or Directors so removed. Any Director designated and selected by Developer need not be a resident in the Condominium. However,

Developer shall be responsible for the payment of any assessments, which may be levied by the Association against any Condominium Unit or Units owned by the said Developer, and for complying with the remaining terms and provisions hereof in the same manner as any other Owner of a Condominium Unit or Units.

XXXII.  
SEVERABILITY

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

XXXIII.  
LIBERAL CONSTRUCTION

The provisions of this Declaration of Condominium shall be literally construed to effectuate its purpose of creating a uniform plan of Condominium ownership. Throughout this Declaration wherever appropriate the singular shall include the plural and the masculine gender shall include the feminine or neuter. The article headings are for convenience of reference only and shall not be consideration terms of this Declaration.

XXXIV.  
DECLARATION OF CONDOMINIUM BINDING ON  
ASSIGNS AND SUBSEQUENT OWNERS

The restrictions and burdens imposed by the covenants of this Declaration of Condominium are intended to and shall constitute covenants running with the land, and shall constitute an equitable servitude upon each Condominium Unit and its appurtenant undivided interest in Common Property. This Declaration of Condominiums shall be binding upon Developer, its successors and assigns, and upon all parties who may subsequently become Owners of Condominium uncured for a period of sixty (60) days by any Owner owning a Condominium Unit in the Condominium, and their respective heirs, legal representatives, successor and assigns.

XXXV.  
AGENT FOR SERVICE OF PROCESS

The following named individual is designated as the person to receive service of process for the Association: James H. Smith.

XXXVI.

CONFLICTING PROVISIONS

To the extent the provisions of this Declaration conflict with any applicable provisions of the Fayetteville City Code or Chapter 47C of the General Statutes of North Carolina, the conflicting provision of the City Code or the North Carolina Statute shall control. In the event of a conflict between the North Carolina Statute and the City Code, then in that event, the North Carolina General Statute shall control.

XXXVII

AD VALOREM TAXES

Any City of Fayetteville and/or County of Cumberland ad valorem taxes on the common area shall be the responsibility of and paid by the Association of Unit Owners from the assessments provided for under Article XXIV herein and subject to all provisions of said Article XXIV including those providing for assessments and liens.

Upon default by the Association of Unit Owner in the payment of any ad valorem taxes levied against common areas or assessments for public improvements, which continues for a period of six months, each owner of a Unit shall become personally obligated to pay to the tax assessing governmental authority a portion of such taxes or assessments in an amount determined by dividing the total taxes and/or assessments due by the total number of building sites. If not paid by the Owner within 30 days, said sum shall become a continuing lien and taxing or assessing governmental authority may either bring an action at law against the Owner personally obligated to pay the same or elect to foreclose the lien.

IN WITNESS WHEREOF, HIGHLAND DEVELOPMENT PARTNERS has caused these presents to be executed in its name by its Managing Partner.

This the 6<sup>th</sup> day of December, 2004

Highland Development Partners, LLC

By: James H. Smith  
James H. Smith, Manager

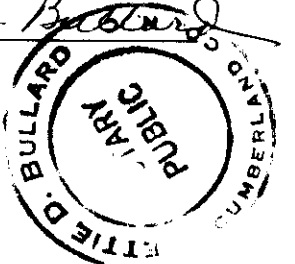


NORTH CAROLINA  
CUMBERLAND COUNTY

I, Hettie D. Bullard, a Notary Public for said County and State, do hereby certify that James H. Smith, Manager of Highland Development Partners, LLC, a NC limited liability company personally appeared before me this day and acknowledged the due execution of the foregoing instrument on behalf of said Highland Development Partners, LLC

WITNESS my hand and notarial seal this 6<sup>th</sup> day of December, 2004

My Commission Expires:  
May 25, 2005

Hettie D. Bullard  
Notary Public  


The foregoing Certificate(s) of Hettie D. Bullard  
is/are certified to be correct. This instrument and this certificate are duly registered at the date and time and in the Book and Page shown on the first page hereof.  
By J. Lee Warren, Jr. REGISTER OF DEEDS FOR CUMBERLAND COUNTY, Deputy/Assistant - Register of Deeds

The foregoing By-laws were duly adopted by the Board of Directors of this Corporation on the 20<sup>th</sup> day of March, 2004.

W. R. P. H. H. H.  
James H. L. H.  
Joseph M. R. H.

Exhibit "A"

Being all of Lot 1 as shown on plat recorded in Condominium Book 0, Page 163,  
Cumberland County Registry.

Exhibit "A-1"

Being all of Lot 2 as shown on plat recorded in Condominium Book 6, Page 163,  
Cumberland County Registry.



ARTICLES OF INCORPORATION

OF

STERLING MANOR OWNERS ASSOCIATION, INC.

I, the undersigned, being a natural person of full age, make these Articles of Incorporation for the purpose of forming a nonprofit corporation pursuant to the provisions of Chapter 55A of the North Carolina General Statutes.

ARTICLE I  
NAME

The name of the corporation is STERLING MANOR OWNERS ASSOCIATION, INC.

ARTICLE II  
DURATION

The period of duration of the corporation shall be perpetual.

ARTICLE III  
PURPOSES

The purposes for which the corporation is organized are:

- a. To provide for the management, maintenance, preservation, administration and operation of a Residential Condominium subdivision development known as "STERLING MANOR CONDOMINIUMS" as set forth in that certain Declaration of Covenants, Conditions and Restrictions to be recorded in the Office of the Register of Deeds for Cumberland County, North Carolina (the "Declaration").
- b. To promote the health, safety and welfare of the "Owners" (as defined in the Declaration) within the jurisdiction of this corporation.
- c. To engage in any and all lawful activities incidental to the foregoing purposes, except as restricted herein.

ARTICLE IV  
POWERS

In order to carry out the purposes for which this corporation has been formed, the corporation shall have all of the powers set forth in Chapter 55A of the North Carolina General Statutes including, but not by way of limitation, the power:

- a. To exercise all of the privileges and powers and to perform all of the duties and obligations of the corporation as set forth in the Declaration and the By-Laws attached thereto;
- b. To fix, levy, collect and enforce payment by any lawful means of all charges or assessments pursuant to the terms of the Declaration, to pay all expenses in connection therewith and all office and other expenses incident to the conduct of the business of the corporation, including all licenses, taxes or governmental charges levied or imposed against the property of the corporation;
- c. To acquire (by gift, purchase or otherwise), own, hold, improve, build upon, operate, maintain, convey, sell, lease, transfer, dedicate for public use or otherwise dispose of real or personal property in connection with the affairs of the corporation;
- d. To borrow money, and with the consent of eighty percent (80%) of the allocated interest of the membership, to mortgage, pledge, grant a deed of trust or hypothecate any or all of the Common Area as security for money borrowed or debts incurred subject to the property rights of the members of the corporation as provided in the Declaration and the Bylaws attached thereto;
- e. To dedicate, sell or transfer all or any part of the Common Area (as defined in the Declaration) to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed upon by the members of the corporation as provided in the Declaration and the Bylaws attached thereto.

ARTICLE V  
NO PECUNIARY GAIN

This corporation is a nonprofit corporation, and no part of the net earnings (if any) of the corporation shall inure to the pecuniary benefit of its members, officers or directors.

ARTICLE VI  
MEMBERSHIP AND VOTING RIGHTS

Membership in the corporation shall be limited to the owners of fee simple interests (the "Owners") in units (the "Units") in the STERLING MANOR CONDOMINIUMS, and every Owner of a Unit shall automatically be a member of the corporation. Members shall not include persons or entities who hold an interest merely of the corporation. Members shall not include persons or entities who hold an interest merely as security for the payment of performance of an obligation. Membership in the corporation shall be appurtenant to and may not be separated from Unit ownership.

The Association shall have two (2) classes of voting membership:

Class A: Class A members shall be all Owners of Units, with the exception of Highland

Development Partners, LLC (the "Declarant"), and shall be entitled to votes allocated to each Unit in accordance with Exhibit B attached to the Declaration and incorporated herein by this reference. The votes allotted to each Unit have been determined by ratio of one (1) vote for every Unit. The Declarant reserves the irrevocable right, power and authority for as long as there exists a Class B membership to amend the Declaration to reflect the addition or creation of any Units or Common Area or the withdrawal of any Unit and the changes necessitated thereby to include changes in the expense responsibilities of each Unit Owner in and for said Common Area and voting rights in the corporation of each Unit Owner; provided, however, that such changes shall be based upon the aforesaid ratio based upon one (1) vote for each Unit.

Class B: Class B members shall be the Declarant and shall be entitled to the votes allotted to each Unit owned by the Declarant as are determined by a ratio based upon one (1) vote for every Unit. The Class B membership shall cease and be converted to a Class A membership respectively upon the happening of either on the following events, whichever occurs earlier:

- a) Declarant no longer owns a Unit in Sterling Manor Owners Association, Inc., a Condominium; or
- b) on January 1, 2010.

In the event fee simple title to a Unit is owned of record by more than one person or entity, all such persons or entities shall be Members of the corporation, but the votes with respect to any such jointly owned Unit shall be cast as hereinafter provided. If the fee simple title or a leasehold interest to any Unit is owned of record by two or more persons or entities (whether individually or in a fiduciary capacity), the votes with respect to any such jointly owned Unit may be cast by any one of the joint Owners in person or by proxy, except that the holder or holders of a life estate in a Unit shall have the sole right to cast votes allocated to the Unit. If more than one of the joint Owners vote or more than one life estate holder in a Unit vote, the unanimous action of all joint Owners or joint life estate holders voting shall be necessary to effectively cast the votes allocated to the particular Unit. Such unanimous action shall be conclusively presumed if any one of such multiple Owners casts the votes allocated to that Unit without protest being made promptly to the person presiding over the meeting by any of the other of such joint Owners.

In no event may the votes which may be cast with respect to any Unit be divided among joint Owners of the Unit or cast in any manner other than as a whole, it being the intention that there be no "splitting" of votes that may be cast by any Member or Members.

#### ARTICLE VII REGISTERED AGENT AND OFFICE

The address of the initial registered office and principal office in the State of North Carolina is P.O. Box 53421, Fayetteville, North Carolina 28305, and the name of the initial registered agent at such address is Jimmy Smith. The physical address is 1206 Longleaf Drive, Fayetteville, NC 28305



ARTICLE VIII  
EXECUTIVE BOARD

The affairs of the corporation shall be managed by an Executive Board of 3 members who need not be members of the corporation. The number of members of the Executive Board may be changed by amendment of the By-Laws of the corporation. The number of persons constituting the initial Executive Board is 3 and the names and address of the persons who are to act as initial members of the Executive Board until the first annual meeting of the members or until their suc-cessors are elected and qualified are:

<u>Name</u>	<u>Address</u>
Jimmy Smith	P.O. Box 53421
George Rose	Fayetteville, NC 28305
D. Ralph Huff	

The initial Board shall serve until their successors are elected or appointed at the first Annual Membership Meeting. Each Director elected by the Membership to replace an initial Director upon the expiration of his term of office shall serve for a term of office ending with the second Annual Meeting of members following his election or until his successor shall be elected and qualify. The Executive Board shall be appointed by the Declarant until the earlier of (i) 120 days after conveyance of seventy-five percent (75%) of the Units (including any Units which may be created pursuant to special declarant rights) to a Unit owner other than declarant; (ii) two years after declarant has ceased to offer Units for sale in the ordinary course of business; (iii) two years after any development right to add new Units was last exercised, or (iv) the date upon which declarant voluntarily surrenders control of the subdivision. Provided however, that no later than sixty (60) days after conveyance of Units to which fifty percent (50%) of the total percentage of ownership appertain to unit Owners other than the Declarant, at least one (1) Member, and not less than twenty-five percent (25%) of the Directors shall be elected by after conveyance of Units to which one hundred percent (100%) of the total percentage of ownership appertain to Unit Owners other than the Declarant, not less than one hundred percent (100%) of the Directors shall be elected by Unit Owners other than the Declarant. At such time as the membership controls the election of a majority of the Executive Board, the number of Directors shall become four (4).

ARTICLE IX  
AMENDMENTS

These Articles may be amended only by a vote of the Owners of Units to which at least sixty-seven percent (67%) of the ownership of the corporation is allocated. Provided, however, where a larger vote in the corporation is required for the corporation to take or refrain from taking a specific action, as set forth in the Declaration, no amendment of these Articles shall be made unless and until the Owners holding such larger percentage of the vote in the corporation approve said amending instrument. No amendment to these Articles shall be adopted or passed which shall impair or prejudice the rights and priorities of any Mortgagee without the consent of

such Mortgagee. No amendment to these Articles shall be adopted or passed which shall impair or prejudice the rights of Declarant provided for in the Condominium Documents, without the consent of Declarant. Notwithstanding anything contained herein to the contrary, the Declarant shall have the unfettered right to amend these Articles without the consent of the Class A membership so long as Class B membership exists.

No amendment of these Articles, Bylaws and Declaration shall be effective until prepared, executed and certified on behalf of the corporation by any officer designated for that purpose by the Executive Board or, in the absence of designation, by the President of the corporation, and recorded in the Office of the Register of Deeds of Cumberland County, North Carolina.

ARTICLE X  
INCORPORATOR

The name and address of the incorporator:

Jeff Dunham  
P.O. Box 87009  
Fayetteville, NC 28304

ARTICLE XI  
DISSOLUTION

Upon the dissolution of the corporation, the Board of Directors shall, after paying or making provision for the payment of all of the liabilities of the corporation, and the return, transfer or conveyance of all assets held by the corporation upon condition requiring return, transfer or conveyance, which condition occurs by reason of the dissolution, subject to these articles and the bylaws, distribute the remaining assets of the corporation as provided in the plan of dissolution.

IN WITNESS WHEREOF, I, the undersigned incorporator, have hereunto set my hand and seal this 9th day of January, 2004.

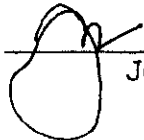
 \_\_\_\_\_ (SEAL)  
Jeff Dunham, Incorporator

Exhibit 'E'

BY-LAWS OF

STERLING MANOR OWNERS ASSOCIATION, INC.

ARTICLE I

GENERAL

These are By-Laws of Sterling Manor Owners Association, Inc., hereinafter called "the Association," a nonprofit corporation organized and existing under the laws of the State of North Carolina. The Articles of Incorporation were filed in the office of the Secretary of State on March \_\_, 2004. The Association has been organized for the purposes of the administration, operation and management, and for such other purposes set forth in the Articles of Incorporation and the Declaration of Covenants, Conditions and Restrictions which is incorporated herein by reference, of a planned unit development established in accordance with the laws of the State of North Carolina upon property situated in Cumberland County, North Carolina, and described in the Declaration of Covenants, Conditions and Restrictions (the "Declarant").

A. The provisions of these By-Laws are applicable to the Association and all future phases, if any, and the terms and provisions hereof are expressly subject to the terms, provisions, conditions and authorizations contained in the Articles of Incorporation. The terms and provisions of the Articles of Incorporation and Declaration and/or amendments thereto will be controlling wherever the same may be in conflict herewith.

B. All present or future owners, tenants, future tenants, and their employees, and any other person that might use the Association facilities in any manner are subject to the regulations set forth in these By-Laws and in said Articles of Incorporation and Declaration.

C. The office of the Association will be at P.O. BOX 53421 Fayetteville, Cumberland County, North Carolina, 28305.

D. The fiscal year of the Association shall be the calendar year, except that in the initial year of operation the fiscal year shall commence with the date of the filing of the Articles of Incorporation in the office of the Secretary of State.

ARTICLE II

MEMBERSHIP, VOTING QUORUM, PROXIES

A. QUALIFICATIONS: The qualifications of members, the manner of their admission to membership and termination of such membership, and voting members, shall be as set forth in Article VI of the Articles of Incorporation. The provisions of Article VI of the Articles of Incorporation are incorporated herein by reference.

B. QUORUM: A quorum at members' meeting shall consist of persons entitled to cast a majority of the votes of the entire membership. The joinder of a member in the action of a

meeting by signing and concurring in the minutes thereof shall constitute the presence of such person for the purpose of determining a quorum.

C. VOTING: Each member shall be entitled to vote as set forth in Article VI of the Articles of Incorporation. The provisions of Article VI of the Articles of Incorporation are incorporated herein by reference.

D. PROXIES: Votes may be cast in person or by proxy. Proxies shall be valid only for the particular meeting designated thereon and must be filed with the Secretary of State before the appointed time of the meeting.

E. BINDING EFFECT: Approval or disapproval of an owner upon any matter, whether or not the subject of an Association meeting, shall be by the same person who would cast the vote of such owner if in an Association meeting. Except where otherwise required under the provisions of the Articles of Incorporation, these By-Laws, the Declaration, or whether the same may otherwise be required by law, the affirmative vote of the persons entitled to cast a majority of the votes at any duly called member's meeting at which a quorum is present shall be binding upon all members.

### ARTICLE III

#### ANNUAL AND SPECIAL MEETINGS OF MEMBERSHIP

A. ANNUAL MEETINGS: A meeting of the Association shall be held at least once each year. The first annual meeting shall be held within one year from the date of incorporation of the Association. Prior to the first annual meeting the Association shall be managed and controlled by the initial Executive Board as provided for in Article IV herein. The annual member's meeting shall thereafter be held at a date, hour and place designated by the Executive Board for the purpose of electing Directors and of transacting any other business authorized to be transacted by the members.

B. SPECIAL MEETINGS: Special member's meetings may be called at any time by the president, a majority of the Executive Board or upon written request of 20% of the members.

C. NOTICE: Written notice of each meeting shall be given by, or at the direction of, the secretary or person(s) authorized to call the meeting, by hand delivering, facsimile or mailing a copy of such notice, postage prepaid, at least 10 days and not more than 50 days before such meeting to each member. Unless waived in writing, the notice of meetings shall state the time, place, and purpose for which the meeting is called. If presented personally, receipt of such notice shall be signed by the member indicating the date on which such notice was received by him. If mailed, such notice shall be deemed to be properly given when deposited in the United States mail addressed to the member at his address as it appears on the record of the Association (register of owners) as of the date of mailing. Proof of such mailing or notice by facsimile shall be given by the affidavit of the person giving the notice. Any member may, by signed written waiver of notice, waive such notice. When filed in the records of the Association whether before or after the holding of the meeting, such waiver shall be deemed equivalent to the giving

of notice to the member. If any member's meeting cannot be organized because a quorum has not attended, or because the greater percentage of the membership required to constitute a quorum for particular purposes has not attended (wherever the latter percentage of attendance may be required as set forth in the Articles of Incorporation, these By-Laws or the Declaration) the members who are present, either in person or by proxy, may adjourn the meeting until a quorum, or the required percentage of attendance, if greater than a quorum, is present.

D. NOTICE OF BUDGET: Within 30 days after adoption of any proposed budget for the Association, the Executive Board shall provide a summary of the budget to all the Unit owners. The budget shall be considered at a meeting of the Unit owners.

E. ORDER OF BUSINESS: The order of business at annual members' meetings and, as far as practical, at any other members' meetings shall be:

- a) Calling of the roll and certifying of proxies;
- b) Prof of notice of meeting or waiver of notice;
- c) Reading and disposal of any unapproved minutes;
- d) Reports of officers;
- e) Reports of committees;
- f) Appointment of inspectors of election by Chairman;
- g) Unfinished business;
- h) New business; and
- i) Adjournment.

#### ARTICLE IV

##### EXECUTIVE BOARD

A. EXECUTIVE BOARD: The first Executive Board of the Association shall consist of three (3) persons chosen by Highland Development Partners, LLC (the "Declarant") whose terms shall expire on the date of the first annual meeting of the members of the Association as outlined above. Each succeeding Board shall consist of the Association. Notwithstanding any provisions to the contrary herein, as long as there exists a Class B membership, the Declarant shall have the right to designate and select a majority of the persons who shall serve as members of the Executive Board of the Association, subject to the provisions of Section XI of the Declaration.

B. ELECTION OF DIRECTORS: Election of Directors shall be conducted in the following manner:

a) Beginning with the first annual meeting of the Association, all members of the Executive Board shall be elected by a plurality of the votes cast at the annual meeting of the members of the Association and shall be elected to serve for a terms of two (2) years, or until removed in the manner elsewhere provided or as may be provided by law.

b) Vacancies in the Executive Board may be filled until the date of the next annual meeting by a majority by the remaining Directors.

c) There shall be appurtenant to each Lot a vote as set out in the Declaration and the Articles of Incorporation. If more than one person or entity owns a unit, the voting shall be in accordance with Article II, paragraph C above.

C. REGULAR MEETING: Regular meetings of the Board of Directors shall be held immediately following the regular Meeting of the Members. Notice of regular meetings shall be given to each Directors, personally or by mail, facsimile, telephone or telegraph, at least three (3) days prior to the day named for such meeting, unless notice is waived.

D. SPECIAL MEETING: Special meetings of the Directors may be called by the President, and must be called by the Secretary at the written request of one-third (1/3) of the votes of the Board. Not less than three (3) days notice of a meeting shall be given to each Director, personally or by mail, facsimile, telephone or telegram, with the notice stating the time, place and purpose of the meeting.

E. WAIVER: Any Director may waive notice of a meeting before or after the meeting and such waiver shall be deemed equivalent to the giving notice.

F. QUORUM OF DIRECTORS: A quorum at a Director's meeting shall consist of the Directors entitled to cast a majority of the votes of the entire Board. The acts of the Board approved by a majority of the votes of the entire Board. The acts of the Board approved by a majority of the votes cast at a meeting at which a quorum is present shall constitute the acts of the Board of Directors, except as specifically otherwise provided in the Articles of Incorporation or these By-Laws or the Declaration. If any Directors' meeting cannot be organized because a quorum has not attended, or because the greater percentage of the Directors required to constitute a quorum for particular purposes has not attended, wherever the latter percentage of Attendance may be required as set forth in the Articles of Incorporation, these By-Laws or Declaration, the Directors who are present may adjourn the meeting until a quorum, or the required percentage of attendance is greater than a quorum, is present. At any adjourned meeting, any business that might have been transacted at the meeting as originally called may be transacted without further notice. The joinder of a Director in the action of a meeting by signing and concurring in the minutes thereof shall constitute the presence of such Director for the purpose of determining a quorum.

G. ACTION WITHOUT MEETING: The Executive Board shall have the right to take any action in the absence of a meeting which they could take at a duly held meeting by obtaining the written consent of all the Executive Board members to the action. Any action so approved shall be filed in the corporate books and records and shall have the same effect as though taken at a meeting of the Executive Board.

H. PRESIDING OFFICER: The presiding officer of Directors' meetings shall be the chairman of the board, if such an officer has been elected; and if none, then the President of the association shall preside. In the absence of the presiding officer, the Directors shall designate

one of their number to preside.

- I. FEES: Directors' fees, if any, shall be determined by the members.
- J. POWERS AND DUTIES: All the powers and duties of the Association shall be exercised by the Executive Board, including those existing under the common law and statutes, the Articles of Incorporation of the Association, these By-Laws and the Declaration. Such powers and duties shall be exercised in accordance with the Articles of Incorporation, these By-Laws and the Declaration, and shall include, without limiting the generality of the foregoing, the following:
  - a) To make, levy, and collect assessments against members' to defray the costs of the Association, as provided for in Article IV of the Declaration which Article is herein incorporated by reference, and to use the proceeds of said assessments in the exercise of the powers and duties granted unto the Association.
  - b) To maintain, repair, replace, operate and manage the common areas and facilities wherever the same is required to be done and accomplished by the Association for the benefit of its members; and to approve any expenditures made or to be made for said purposes.
  - c) To reconstruct any part of the common property after casualty in accordance with Declaration, and to make further improvements to the common property, and to enter into any and all contracts necessary or desirable to accomplish said purposes.
  - d) To make, amend and enforce regulations governing the use of the common property as a whole so long as such regulations or amendments do not conflict with the restrictions and limitations which may be placed upon the use of such property under the terms of the Articles of Incorporation and Declaration.
  - e) To acquire, operate, lease, manage, and otherwise trade and deal with the property, real and personal, as may be necessary or convenient in the operation and management of the planned unit development in accomplishing the purposes set forth in the Declaration, provided that the acquisition of real property other than the real property described in the Declaration shall require the approval of the Association.
  - f) To acquire now or at any time hereafter and to enter into leases and agreements whereby the Association acquires leaseholds, memberships and other possessory or use interests in land or facilities whether or not contiguous to the lands of the condominium to provide enjoyment or other use or benefit to the owners of the Lots.
  - g) To contract for the management of the Association and to designate to such contractor all of the powers and duties of the Association, except those which may be required by the Declaration and the regulations hereinafter promulgated governing use of the common property in the planned unit development.

h) To enforce by legal means or proceedings the provisions of the Articles of Incorporation and By-Laws of the Association, the Declaration and the regulations hereinafter promulgated governing use of the common property in the planned unit development.

i) To pay all taxes and assessments which are or may become liens against any part of the common property and the appurtenances thereto and to assess the same against the members in amounts equal to their respective ownership interest subject to such liens.

j) To purchase insurance for the protection of the members and the Association against liability and casualty in accordance with the Declaration.

k) To pay all costs of power, water, sewer and other utility services rendered to the Association and not billed to the owners of the separate Units.

l) To designate and remove personnel necessary for the maintenance, repair, replacement and operation of the common property.

m) To exercise all other powers that may be exercised in this State by legal entities of the same type as the Association;

n) To exercise any and all powers, rights and privileges which a corporation organized under the Non-Profit Corporation Law of the State of North Carolina by law may now or hereafter have or exercise; and

o) To exercise any other powers necessary and proper for the governance and operation of the Association;

K. INITIAL BOARD: The initial Executive Board of the Association shall be comprised of three (3) persons designated to act and serve as Directors in the Articles of Incorporation, which said persons shall serve until their successors elected at the first annual meeting of the members of the Association. Should any member of the initial Board of Directors be unable to serve for any reason, a majority of the Board shall have the right to select and designate a party to act and serve as Director until the first annual Meeting of the members of the Association.

L. PRIOR UNDERTAKINGS: The undertaking and contracts authorized by the initial Board of Directors shall be binding upon the Association in the same manner as though such undertakings and contracts had been authorized by any Board of Directors duly elected by the membership, so long as such undertakings and contracts are within the scope of the powers and duties which may be exercised by the Board of Directors of the Association in accordance with all applicable condominium documents.

M. REMOVAL: Any one or more of the members of the Board of Directors may be removed, either with or without cause, at any time by a vote of the members owning a majority



of the interest in the condominium at any special meeting called for such purpose, or at the annual meeting; provided however, that only the Declarant shall have the right to remove a Director appointed by it.

## ARTICLE V

### OFFICERS

A. ELECTION: The executive officers of the Association shall be a President, who shall be a Director, a Vice-President, and a Secretary-Treasurer, all of whom shall be elected annually by the Board of Directors and who may be pre-emptorily removed by a vote of the Directors at any meeting. The Board of Directors shall, from time to time, elect such other officers and designate their powers and duties as the Board shall find to be required to manage the affairs of the Association.

B. PRESIDENT: The President shall be the Chief Executive officer of the Association. He shall have all of the powers and duties which are usually vested in the office of the president of any association, including, but not limited to the power to appoint committees from among the members from as he may in his discretion determine appropriate to assist him in the conduct of the affairs of the Association.

C. VICE-PRESIDENT: The Vice-President shall, in the absence or disability of the President, exercise the powers and perform the duties of President. He shall also generally assist the President and exercise such other powers and perform such other duties as shall be prescribed by the Directors.

D. SECRETARY-TREASURER: The Secretary shall keep the minutes of all proceedings of the Directors and the members. He shall attend to the giving and serving of all notices to the members and Directors, and such other notices required by law. He shall have custody of the seal of the Association and affix the same to instruments requiring a seal when duly signed. He shall keep the records of the Association and shall perform all other duties which are usually vested in the office of secretary of an association and as may be required by the Directors or the President. He shall also have custody of all of the property, securities and evidences of indebtedness. He shall keep, or supervise the keeping of, the assessment rolls and accounts of the members; he shall keep the books of the Association in accordance with good accounting practices; and he shall perform all other duties usually vested in the office of Treasurer.

E. FEES: The compensation of all officers and employees of the Association shall be fixed by the Directors. This provision shall not preclude the Board of Directors from employing a Director as an employee of the Association, nor preclude the contracting with a Director for the management of the condominium.

F. REMOVAL: All officers shall serve at the pleasure of the Board of Directors and any officer may be removed from office at any time, with or without cause, by a majority vote of the Board of Directors.

ARTICLE VI

FINANCES AND FISCAL MANAGEMENT

The provisions for fiscal management of the Association set forth in the Declaration and Articles of Incorporation shall be supplemented by the following provisions:

A. ASSESSMENTS: An assessment roll shall be maintained in a set of accounting books in which there shall be an account for each Unit. Such account shall designate the name and address of the Unit owner or owners, the amount of each assessment against the owners, the dates and amounts in which assessments come due, the amounts paid upon the unit.

B. BUDGET: The Board of Directors shall adopt a budget for each calendar year which shall contain estimates of the cost of performing the functions of the Association, including but not limited to, the following:

a) Common expense budget, which may include, without limiting the generality of the foregoing, the estimated amounts necessary for the maintenance and operation of and capital improvements to the common property including landscaping, street and walkways, office expense, utility services, insurance, administration and reserves (operating and capital improvements replacement); management fees and costs of maintaining memberships, and other possessory or use interest in lands or facilities whether or not contiguous to the lands of the condominium, to provide for the use or benefit to the unit owners; and

b) Propose assessments for the successful operation of the planned unit development as provided in the Declaration. Copies of the proposed budget and proposed assessments shall be transmitted to each member at least 30 days prior to annual meeting of the Membership at which time an annual budget shall be adopted. If the budget is subsequently amended before the assessments are made, a copy of the amended budget shall be furnished each member concerned. Upon request, delivery of a copy of any budget or amended budget to each member shall not affect the liability of any member for any such assessments, nor shall delivery of a copy of such budget or amended budget be considered as a condition precedent to the effectiveness of said budget and assessments levied pursuant thereto, and nothing herein contained shall be construed as restricting the right of the Board of Directors, at any time in their sole discretion, to levy any additional assessments in the event that the budget originally adopted shall appear to be insufficient to pay costs and expenses of operation and management, or in the event of emergencies, subject to the terms and provisions of the Declaration.

C. DEPOSITORY: The depository of the Association shall be such bank, banks or other institutions as shall be designated from time to time by the Directors and in which the

monies of the Association shall be deposited. Withdrawal of monies from such accounts shall be only by checks signed by such persons as are authorized by the Directors.

## ARTICLE VII

### PARLIAMENTARY RULES

Roberts Rules of Order (latest edition) shall govern the conduct of corporate proceedings when not in conflict with the Articles of Incorporation and these By-Laws or with the Statutes of North Carolina.

## ARTICLE VIII

### AMENDMENT TO BY-LAWS

Amendments to these By-Laws shall be proposed and adopted in the following manner:

A. Amendments to these By-Laws may be proposed by the Board of Directors of the Association acting upon an affirmative vote of a majority of the Directors, or by members of the Association owning a majority of the Units whether meeting as members or by instrument by writing signed by them.

B. Upon any amendment or amendments to these By-Laws being proposed by said Board of Directors or members, such proposed amendment or amendments shall be transmitted to the President of the Association, or other office of the Association in the absence of the President, who shall thereupon call a special joint meeting of the members of the Board of Directors of the Association and the membership for a date not sooner than twenty (20) days or later than sixty (60) days from receipt by such officer of the proposed amendment or amendments and it shall be the duty of the Secretary to give to each member written or printed notice of such meeting in the same form and in the same manner as notice of the call of a special meeting of the members is required as herein set forth.

C. In order for such amendment or amendments to become effective, the same must be approved by an affirmative vote of a majority of the entire membership of the Board of Directors and by an affirmative vote of the members owning Units entitled to vote not less than sixty-seven (67%) percent or more of the votes of the Association. Thereupon, such amendment or amendments to these By-Laws shall be transcribed, certified by the President and Secretary of the Association, and a copy thereof shall be placed in the corporate minutes or records of the Association.

D. Upon the approval, the same shall become binding upon all Unit owners.

E. At any meeting held to consider any amendment or amendments to the By-Laws, the written vote of any member of the Association shall be recognized if such member is not attendant at such meeting or represented there at by proxy, provided such written vote is delivered to the Secretary of the Association at or prior to such meeting.

ARTICLE IX

COMMITTEES

A. COMMITTEES: The Board may establish by resolution adopted by a majority of Directors, such committees which it deems necessary or desirable to carry out the purpose of the Corporation.

B. COMMITTEE CHAIRMAN AND MEMBERS: The Chairman of all committees shall be appointed by and serve at the pleasure of the Board.

C. COMMITTEE REPORTS: The Chairman of each committee shall make a report to the President in writing of committee meetings and activities.

D. AUTHORITY: Unless specifically authorized in writing by the Board or the President, a committee Chairman or a committee shall have no authority to legally obligate the Corporation or incur any expenditure on behalf of the Corporation.

ARTICLE X

SUSPENSION OF RIGHTS

The Board may suspend, by a majority vote of the Board, the voting rights and right to hold office of a member during any period in which the member shall be in default in the payment of any dues, assessments, penalties or fines, imposed by the Corporation. Such rights may be suspended, after notice and hearing, for a period not to exceed sixty (60) days for a violation of the Association's Rule and Regulations, these By-Laws, or the Declaration.

ARTICLE XI

ASSETS OF THE ASSOCIATION

The Association shall hold, own, maintain, manage, control, repair, preserve, replace, care for and operate any and all real property, together with appurtenances, fixtures and improvement thereto, all personal property, all fixtures, all rights and privileges, including 11 parts of the water, sewer and drainage systems, and other possessory or use interest in land, facilities, and roads and streets which may be conveyed to, or made available for use by the

Association, the Declarant, or by any other person, firm, corporation or entity, or belonging to, or made available for, the Association, for the use, enjoyment, health, safety and welfare of the owners of said Units.

All such real property together with appurtenances, fixtures and improvements thereto, personal property, fixtures, rights and privileges, and other possessory or use interests in land or facilities owned by, belonging to, or made available for, the Association shall be treated, except as otherwise specifically in these By-Laws provided, as common areas and facilities of the "STERLING MANOR OWNERS ASSOCIATION, INC., a Condominium project for the purposes of managing, controlling, repairing, replacing, preserving, caring for, operating and otherwise dealing with for the use, health, safety, and welfare of the owners of those Units as herein provided.

The cost and expenses of holding, owning, maintaining, managing, controlling, repairing, replacing, preserving, earning for and operating all common areas of the "STERLING MANOR OWNERS ASSOCIATION, INC.", a Condominium project shall be "common expenses" and shall be included in the budget for each fiscal year for the Association and all provisions of these By-Laws shall apply thereto:

#### ARTICLE XII

##### BOOKS AND RECORDS

The books, records and papers of the Association shall at all times, during reasonable business hours, be subject to inspection by any member or mortgagee of any member. The Articles of Incorporation and the Declaration and Bylaws of the Association shall be available for inspection by any member at the principal office of the Association, where copies may be purchased at reasonable cost.

#### ARTICLE XIV

##### CORPORATE SEAL

The Association shall have a seal in circular form having within its circumference the words: "STERLING MANOR OWNERS ASSOCIATION, INC."

SOSID: 719615  
Date Filed: 4/6/2004 10:09:00 AM  
Elaine F. Marshall  
North Carolina Secretary of State  
C200408900175

ARTICLES OF INCORPORATION

OF

STERLING MANOR OWNERS ASSOCIATION, INC.

I, the undersigned, being a natural person of full age, make these Articles of Incorporation for the purpose of forming a nonprofit corporation pursuant to the provisions of Chapter 55A of the North Carolina General Statutes.

ARTICLE I  
NAME

The name of the corporation is STERLING MANOR OWNERS ASSOCIATION, INC.

ARTICLE II  
DURATION

The period of duration of the corporation shall be perpetual.

ARTICLE III  
PURPOSES

The purposes for which the corporation is organized are:

- a. To provide for the management, maintenance, preservation, administration and operation of a Residential Condominium subdivision development known as "STERLING MANOR CONDOMINIUMS" as set forth in that certain Declaration of Covenants, Conditions and Restrictions to be recorded in the Office of the Register of Deeds for Cumberland County, North Carolina (the "Declaration").
- b. To promote the health, safety and welfare of the "Owners" (as defined in the Declaration) within the jurisdiction of this corporation.
- c. To engage in any and all lawful activities incidental to the foregoing purposes, except as restricted herein.

ARTICLE IV  
POWERS

In order to carry out the purposes for which this corporation has been formed, the corporation shall have all of the powers set forth in Chapter 55A of the North Carolina General Statutes including, but not by way of limitation, the power:

a. To exercise all of the privileges and powers and to perform all of the duties and obligations of the corporation as set forth in the Declaration and the By-Laws attached thereto;

b. To fix, levy, collect and enforce payment by any lawful means of all charges or assessments pursuant to the terms of the Declaration, to pay all expenses in connection therewith and all office and other expenses incident to the conduct of the business of the corporation, including all licenses, taxes or governmental charges levied or imposed against the property of the corporation;

c. To acquire (by gift, purchase or otherwise), own, hold, improve, build upon, operate, maintain, convey, sell, lease, transfer, dedicate for public use or otherwise dispose of real or personal property in connection with the affairs of the corporation;

d. To borrow money, and with the consent of eighty percent (80%) of the allocated interest of the membership, to mortgage, pledge, grant a deed of trust or hypothecate any or all of the Common Area as security for money borrowed or debts incurred subject to the property rights of the members of the corporation as provided in the Declaration and the Bylaws attached thereto;

e. To dedicate, sell or transfer all or any part of the Common Area (as defined in the Declaration) to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed upon by the members of the corporation as provided in the Declaration and the Bylaws attached thereto.

ARTICLE V  
NO PECUNIARY GAIN

This corporation is a nonprofit corporation, and no part of the net earnings (if any) of the corporation shall inure to the pecuniary benefit of its members, officers or directors.

ARTICLE VI  
MEMBERSHIP AND VOTING RIGHTS

Membership in the corporation shall be limited to the owners of fee simple interests (the "Owners") in units (the "Units") in the STERLING MANOR CONDOMINIUMS, and every Owner of a Unit shall automatically be a member of the corporation. Members shall not include persons or entities who hold an interest merely of the corporation. Members shall not include persons or entities who hold an interest merely as security for the payment of performance of an obligation. Membership in the corporation shall be appurtenant to and may not be separated from Unit ownership.

The Association shall have two (2) classes of voting membership:

Class A: Class A members shall be all Owners of Units, with the exception of Highland

Development Partners, LLC (the "Declarant"), and shall be entitled to votes allocated to each Unit in accordance with Exhibit B attached to the Declaration and incorporated herein by this reference. The votes allotted to each Unit have been determined by ratio of one (1) vote for every Unit. The Declarant reserves the irrevocable right, power and authority for as long as there exists a Class B membership to amend the Declaration to reflect the addition or creation of any Units or Common Area or the withdrawal of any Unit and the changes necessitated thereby to include changes in the expense responsibilities of each Unit Owner in and for said Common Area and voting rights in the corporation of each Unit Owner; provided, however, that such changes shall be based upon the aforesaid ratio based upon one (1) vote for each Unit.

Class B: Class B members shall be the Declarant and shall be entitled to the votes allotted to each Unit owned by the Declarant as are determined by a ratio based upon one (1) vote for every Unit. The Class B membership shall cease and be converted to a Class A membership respectively upon the happening of either on the following events, whichever occurs earlier:

- a) Declarant no longer owns a Unit in Sterling Manor Owners Association, Inc., a Condominium; or
- b) on January 1, 2010.

In the event fee simple title to a Unit is owned of record by more than one person or entity, all such persons or entities shall be Members of the corporation, but the votes with respect to any such jointly owned Unit shall be cast as hereinafter provided. If the fee simple title or a leasehold interest to any Unit is owned of record by two or more persons or entities (whether individually or in a fiduciary capacity), the votes with respect to any such jointly owned Unit may be cast by any one of the joint Owners in person or by proxy, except that the holder or holders of a life estate in a Unit shall have the sole right to cast votes allocated to the Unit. If more than one of the joint Owners vote or more than one life estate holder in a Unit vote, the unanimous action of all joint Owners or joint life estate holders voting shall be necessary to effectively cast the votes allocated to the particular Unit. Such unanimous action shall be conclusively presumed if any one of such multiple Owners casts the votes allocated to that Unit without protest being made promptly to the person presiding over the meeting by any of the other of such joint Owners.

In no event may the votes which may be cast with respect to any Unit be divided among joint Owners of the Unit or cast in any manner other than as a whole, it being the intention that there be no "splitting" of votes that may be cast by any Member or Members.

#### ARTICLE VII REGISTERED AGENT AND OFFICE

The address of the initial registered office and principal office in the State of North Carolina is P.O. Box 53421, Fayetteville, North Carolina 28305, and the name of the initial registered agent at such address is Jimmy Smith. The physical address is 1206 Longleaf Drive, Fayetteville, NC 28305



ARTICLE VIII  
EXECUTIVE BOARD

The affairs of the corporation shall be managed by an Executive Board of 3 members who need not be members of the corporation. The number of members of the Executive Board may be changed by amendment of the By-Laws of the corporation. The number of persons constituting the initial Executive Board is 3 and the names and address of the persons who are to act as initial members of the Executive Board until the first annual meeting of the members or until their successors are elected and qualified are:

<u>Name</u>	<u>Address</u>
Jimmy Smith	P.O. Box 53421
George Rose	Fayetteville, NC 28305
D. Ralph Huff	

The initial Board shall serve until their successors are elected or appointed at the first Annual Membership Meeting. Each Director elected by the Membership to replace an initial Director upon the expiration of his term of office shall serve for a term of office ending with the second Annual Meeting of members following his election or until his successor shall be elected and qualify. The Executive Board shall be appointed by the Declarant until the earlier of (i) 120 days after conveyance of seventy-five percent (75%) of the Units (including any Units which may be created pursuant to special declarant rights) to a Unit owner other than declarant; (ii) two years after declarant has ceased to offer Units for sale in the ordinary course of business; (iii) two years after any development right to add new Units was last exercised, or (iv) the date upon which declarant voluntarily surrenders control of the subdivision. Provided however, that no later than sixty (60) days after conveyance of Units to which fifty percent (50%) of the total percentage of ownership appertain to unit Owners other than the Declarant, at least one (1) Member, and not less than twenty-five percent (25%) of the Directors shall be elected by after conveyance of Units to which one hundred percent (100%) of the total percentage of ownership appertain to Unit Owners other than the Declarant, not less than one hundred percent (100%) of the Directors shall be elected by Unit Owners other than the Declarant. At such time as the membership controls the election of a majority of the Executive Board, the number of Directors shall become four (4).

ARTICLE IX  
AMENDMENTS

These Articles may be amended only by a vote of the Owners of Units to which at least sixty-seven percent (67%) of the ownership of the corporation is allocated. Provided, however, where a larger vote in the corporation is required for the corporation to take or refrain from taking a specific action, as set forth in the Declaration, no amendment of these Articles shall be made unless and until the Owners holding such larger percentage of the vote in the corporation approve said amending instrument. No amendment to these Articles shall be adopted or passed which shall impair or prejudice the rights and priorities of any Mortgagee without the consent of

such Mortgagee. No amendment to these Articles shall be adopted or passed which shall impair or prejudice the rights of Declarant provided for in the Condominium Documents, without the consent of Declarant. Notwithstanding anything contained herein to the contrary, the Declarant shall have the unfettered right to amend these Articles without the consent of the Class A membership so long as Class B membership exists.

No amendment of these Articles, Bylaws and Declaration shall be effective until prepared, executed and certified on behalf of the corporation by any officer designated for that purpose by the Executive Board or, in the absence of designation, by the President of the corporation, and recorded in the Office of the Register of Deeds of Cumberland County, North Carolina.

ARTICLE X  
INCORPORATOR

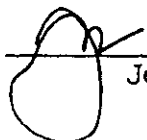
The name and address of the incorporator:

Jeff Dunham  
P.O. Box 87009  
Fayetteville, NC 28304

ARTICLE XI  
DISSOLUTION

Upon the dissolution of the corporation, the Board of Directors shall, after paying or making provision for the payment of all of the liabilities of the corporation, and the return, transfer or conveyance of all assets held by the corporation upon condition requiring return, transfer or conveyance, which condition occurs by reason of the dissolution, subject to these articles and the bylaws, distribute the remaining assets of the corporation as provided in the plan of dissolution.

IN WITNESS WHEREOF, I, the undersigned incorporator, have hereunto set my hand and seal this 9th day of January, 2004.

 \_\_\_\_\_ (SEAL)  
Jeff Dunham, Incorporator