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Alamance, NC  
DAVID J.P. BARBER REGISTER OF DEEDS  
BK 2661 PG 649-683

Declaration of Condominium

For Abbey Glen Condominiums

Prepared by :  
After recording return to:  
E. Lawson Brown, Jr. ✓  
522 S. Lexington Avenue  
Burlington, NC, 27215

Unofficial

DECLARATION OF CONDOMINIUM FOR ABBEY GLEN CONDOMINIUMS

THIS DECLARATION is made this 3<sup>rd</sup> day of January, 2008, by Abbey Glen Condominiums, LLC, "Declarant", pursuant to the North Carolina Condominium Act as codified in Chapter 47C of the North Carolina General Statutes.

WITNESSETH:

WHEREAS, Declarant is the owner in fee simple of certain real estate situated in the City of Gibsonville, Guilford and Alamance Counties, and State of North Carolina, legally described in Exhibit A, together with all building and improvements now or hereafter constructed or located thereon, and all rights, privileges, easements and appurtenances belonging to or in any way pertaining to said real estate; and

WHEREAS, Declarant desires to submit all of said property to the Act.

NOW, THEREFORE, Declarant, as the owner of said property, hereby declares as follows:

ARTICLE I.

DEFINITIONS

Definitions. As used herein, the following words and terms shall have the following meanings:

1.1 Act. The North Carolina Condominium Act as codified in Chapter 47C of the North Carolina General Statutes.

1.2 Affiliate of a Declarant. "Affiliate of a Declarant" means any person who controls, is controlled by, or is under common control with a Declarant. A person "controls" a Declarant if the person (i) is a general partner, officer, director, or employer of the Declarant; (ii) directly or indirectly or acting in concert with one or more other persons, or through one or more subsidiaries, owns, controls, holds with power to vote, or holds proxies representing, more than twenty percent (20%) of the voting interests in the Declarant; (iii) controls in any manner the election of a majority of the directors of the Declarant; or (iv) has contributed more than twenty percent (20%) of the capital of the Declarant. A person "is controlled by" a Declarant if the Declarant (i) is a general partner, officer, director, or employer of the person; (ii) directly or indirectly or acting in concert with one or more other persons, or through one or more subsidiaries, owns, controls, holds with power to vote, or holds proxies representing more than twenty percent (20%) of the capital of the person. Control does not exist if the powers described in this paragraph are held solely as security for an obligation and are not exercised.

1.3 Allocated Interests. "Allocated interests" means the undivided interests in the Common Elements, the common expense liability, and votes in the association allocated to each Unit.

1.4 Association or Abbey Glen Condominium Homeowners' Association, Inc. "Association" or "Abbey Glen Condominiums Homeowners' Association, Inc." means the Unit Owners' non-profit corporation, organized under Section 47C-3-101 and operating under Sections 47C-3-102 and 47C-3-108, its successors and assigns.

1.5 Bylaws. "Bylaws" mean the Bylaws of the Association, created under and pursuant to the provisions of the Act, and which also serve as the code of regulations by the Association under and pursuant to the provisions of Section 47C-3-106.

1.6 Common Elements. "Common Elements" means all portions of a condominium other than the Units.

1.7 Common Expenses. "Common expenses" means expenditures made by or financial liabilities of the association, together with any allocations to reserves.

1.8 Common Expense Liability. "Common expense liability" means the liability for common expenses allocated to each Unit pursuant to Section 47C-2-107.

1.9 Condominiums. "Condominiums" means real estate, portions of which are designated for separate ownership and the remainder of which is designated for common ownership solely by the owners of those portions, the condominium created by this Declaration. Reference is made to the plat of the Real Estate, dated 12-19-07 prepared by Fleming Engineering, Inc. copies of which are recorded herewith in Plat Book 72 at page 278 of the Alamance County Registry and Plat Book C-13 at page 29 of the Guilford County Registry to which reference is made.

1.10 Conversion Building. "Conversion building" means a building that at any time before creation of the condominium was occupied wholly or partially by persons other than purchasers or by persons who occupy with the consent of purchasers.

1.11 Declarant. "Declarant" means any person or group of persons acting in concert who (i) as part of a common promotional plan offers to dispose of his or its interest in a Unit not previously disposed of or (ii) reserves or succeeds to any special Declarant right. Declarant shall mean Abbey Glen Condominiums, LLC.

1.12 Declaration. "Declaration" means this Declaration of Condominium.

1.13 Development Rights. "Development rights" means any right or combination of rights reserved by a Declarant in the Declaration to add real estate to a condominium; to create Units, Common Elements, or limited Common Elements within or without a condominium; to subdivide Units or convert Units into Common Elements; or to withdraw real estate from a

condominium. These rights may be exercised anytime within fifty (50) years of the date of the recordation of this Declaration.

1.14 Dispose or Disposition. "Dispose" or "disposition" means a voluntary transfer to a purchaser of any legal or equitable interest in a Unit, but does not include the transfer or release of a security interest.

1.15 Executive Board. "Executive Board" means the body, regardless of name, designated in the declaration to act on behalf of the Association pursuant to Section 47C-3-103.

1.16 Identifying Number. "Identifying number" means a symbol or address that identifies only one Unit in a condominium.

1.17 Leasehold Condominium. "Leasehold condominium" means a condominium in which all or a portion of the real estate is subject to a lease the expiration or termination of which will terminate the condominium or reduce its size.

1.18 Lessee. "Lessee" means the party entitled to present possession of a leased Unit whether lessee, sublessee or assignee.

1.19 Limited Common Element. "Limited common element" means a portion of the Common Elements allocated by the declaration or by operation of Section 47C-2-102(2) or (4) for the exclusive use of one or more but fewer than all of the Units.

1.20 Master Association. "Master association" means an organization described in Section 47C-2-120, whether or not it is also an Association described in Section 47C-3-101.

1.21 Occupant. "Occupant" means a person lawfully residing in a Unit, regardless of whether or not that person is a Unit Owner.

1.22 Offering. "Offering" means any advertisement, inducement, solicitation, or attempt to encourage any person to acquire any interest in a Unit, other than as security for an obligation. An advertisement in a newspaper or other periodical of general circulation, or in any broadcast medium to the general public, of a condominium not located in this State, is not an offering if the advertisement states that an offering may be made only in compliance with the law of the jurisdiction in which the condominium is located.

1.23 Person. "Person" means a natural person, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision or agency, or other legal or commercial entity.

1.24 Property. "Property" means the real estate described on the attached Exhibit "A" which is referred to and incorporated herein by reference and such additions thereto as may hereafter be brought within jurisdiction of Association.

1.25 Purchaser. "Purchaser" means any person, other than a Declarant or a person in the business of selling real estate for his own account, who by means of a voluntary transfer acquires a legal or equitable interest in a Unit other than (I) a leasehold interest (including renewal options) of less than five (5) years, or (ii) as security for an obligation.

1.26 Real Estate. "Real estate" means any leasehold or other estate or interest in, over, or under land, including structures, fixtures, and other improvements and interests which by custom, usage, or law, pass with a conveyance of land though not described in the contract of sale or instrument of conveyance. "Real estate" includes parcels, with or without upper or lower boundaries, and spaces that may be filled with air or water.

1.27 Residential Purposes. "Residential purposes" means use for dwelling or recreational purposes, or both.

1.28 Security Holder. "Security holder" means any person owning a Security for an obligation in a Unit.

1.29 Special Declarant Rights. "Special Declarant rights" means rights reserved for the benefit of a Declarant to complete improvements indicated on plats and plans filed with the Declaration (Section 47C-2-109); to exercise any development right (Section 47C-2-110); to maintain sales offices, management offices, signs advertising the condominium, and models (Section 47C-2-115); 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 (Section 47C-2-116); to make the condominium part of a larger condominium (Section 47C-2-121); or to appoint or remove any officer of the association or any Executive Board member during any period of Declarant control (Section 47C-3-103(d)).

1.30 Unit. "Unit" means a physical portion of the condominium designated for separate ownership or occupancy, the boundaries of which are described pursuant to Section 47C-2-102. A unit's boundaries shall be designated by its floors, walls and ceilings.

1.31 Unit Owner. "Unit Owner" means a Declarant or other person who owns a Unit, or a lessee of a Unit in a leasehold condominium whose lease expires simultaneously with any lease the expiration or termination of which will remove the Unit from the condominium, but does not include a person having an interest in a Unit solely as security for an obligation.

## ARTICLE II

### SUBMISSION OF PROPERTY TO THE ACT

2.1 Submission. Declarant developer hereby submits the Property to the Act.

2.2 Name. The Property shall hereafter be known as the Abbey Glen Condominiums.

2.3 Division of Property into Separately Owned Units. Declarant, pursuant to the Act, and to establish a plan of condominium ownership for the Condominium, does hereby divide the property into 162 Units and does hereby designate all such Units for separate ownership subject, however, to the provisions of Section 2.4 hereof.

2.4 Alterations of Units. Subject to the provisions of the Bylaws, a Unit may be altered pursuant to the provisions of Section 47C-2-111 of the Act.

2.5 Limited Common Elements. The Limited Common Elements serving or designed to serve each Unit are hereby allocated solely and exclusively to each such Unit. In addition to those defined in Section 1.19, Limited Common Elements include those set forth on Exhibit "B" and are hereby allocated to Units as shown on Exhibit "B".

2.6 Unit Allocations. The allocations to each Unit of a percentage of undivided interest in the Common Elements, of votes in the Association, and of a percentage of the Common Expenses, are as stated on Exhibit "C". The allocation of undivided interests in the Common Elements and of the Common Expenses is according to the area of each Unit to the area of all Units. The votes in the Association are equally allocated to all Units.

2.7 Encumbrances. The liens, defects and encumbrances on the property to which the rights of Unit Owners and Occupants are hereby made subject are set out on Exhibit "D".

2.8 Reservation of Special Declarant Rights. Declarant hereby reserves all Special Declarant Rights.

2.9 Period of Declarant Control. Unless otherwise stated, the period of Declarant Control shall be upon the earlier of: (a) one hundred and twenty (120) days after conveyance of seventy-five percent (75%) of the Units to Unit Owners other than declarant, (b) three years after the first unit estate in a single-phase project is conveyed, or (c) five years after first unit estate in an expandable project is conveyed.

### ARTICLE III

#### DEVELOPMENTAL RIGHTS

3.1 Declarant's Right to Add Additional Real Estate. Declarant expressly reserves the right to add additional real estate to the condominium. All or part of the additional real estate identified and described on Exhibit A-1 may be added to the Condominium at different times, but no assurances are made in regard to the order in which such portions may be added. Declarant shall have no duty or obligation of any kind to add any or all of the additional real estate.

3.2 Declarant's Right to Add Future Phases. Declarant hereby reserves the right to develop future phases of Abbey Glen Condominium on that property described in Exhibits A and

A1, attached hereto. Each firm, person or corporation who purchases lots in future Phases shall purchase said lots subject to these Declarations of Covenants, Conditions and Restrictions and each firm, person, or corporation will automatically become members of Abbey Glen Condominium Homeowners' Association, Inc., together with all rights afforded to each Unit Owner in the By-Laws, but subject to the requirement of said Association's Bylaws.

3.3 Maximum Number of Additional Units; Units Restricted to Residential Use. The maximum number of additional Units that may be created within the additional real estate is the maximum number of Units permitted by applicable municipal code. All of such Units will be restricted exclusively to residential use.

3.4 Compatibility of Style, Etc. Any buildings and Units that may be erected upon the additional real estate or a portion thereof will be compatible with the other buildings and Units in the condominium in terms of architectural style, quality of construction, principal materials employed in construction, and size.

3.5 Applicability of Restrictions, Etc. All restrictions in this Declaration and the Bylaws affecting use, occupancy and alienation of Units will apply to any and all additional Units that may be created within the additional real estate.

3.6 Other Improvements and Common Elements. In addition to the buildings and Units that may be erected upon the additional real estate or a portion thereof, the other improvements and Common Elements that may be made or created upon or within the additional real estate or each portion thereof which may be added to the condominium will be generally similar in quality and quantity to the improvements and Common Elements located in the condominium.

3.7 Applicability of Assurances if Additional Real Estate Not Added. The assurances made in this Article III will not apply with respect to any additional real estate that is not added to the condominium.

3.8 Declarant's Rights and Duties Relating to Unsold Units. The Declarant shall enjoy the same rights and assume the same duties as any homeowner relating to each individual unsold unit.

#### ARTICLE IV

#### MEMBERSHIP AND VOTING RIGHTS

4.1 Membership. Declarant and every Unit Owner who is subject to assessments shall be members of the Association. Membership shall be appurtenant to and may not be separated from ownership or any Unit which is subject to assessment.

4.2 Voting. There shall be one vote allocated to each Unit. If 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 Association, but the vote with respect to any such jointly owned Unit shall be cast as hereinafter provided.

If the fee simple title to any Unit is owned of record by two or more persons or entities (whether individually or in a fiduciary capacity), the vote 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 the 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 Unit 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 Unit 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 Unit Owners.

In no event may the vote which may 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 of this Section 4 that there be no "splitting" of votes that may be cast by any member or members.

4.3 Executive Board. The Executive Board initially shall be those two (2) persons named as initial board members pursuant to the provisions of this declaration and the Bylaws, or such other person or persons as may from time to time be substituted by Declarant.

No later than sixty (60) days after the conveyance of twenty-five percent (25%) of the Units to Unit Owners other than the Declarant, at least one member and not less than twenty-five percent (25%) of the members of the Executive Board shall be elected by Unit Owners other than the Declarant.

Not later than sixty (60) days after conveyance of fifty percent (50%) of the Units, including those Units which may be subject to special Declarant rights, to Unit Owners other than Declarant, not less than thirty-three percent (33%) of the members of the Executive Board shall be elected by Unit Owners other than the Declarant.

Not later than the termination of any period of Declarant control, the Unit Owners shall elect an Executive Board of six (6) members, at least the majority of whom must be Unit Owners. The Executive Board shall elect the officers. The Executive Board members and officers shall take office upon election.

The officers and members of the Executive Board shall be deemed to stand in a fiduciary relationship to the Association and Unit Owners and shall discharge their duties in good faith, and with that diligence and care which ordinarily prudent men would exercise under similar circumstances in like positions.

4.4 Executive Board Election Terms. The terms of the six (6) board members shall be staggered so that the terms of one-third (1/3) or two (2) of the board members will expire and successors will be elected at each annual meeting of the Association. Thereafter, at such annual meetings, successors to the two (2) board members whose terms then expire shall be elected to serve three (3) year terms. Notwithstanding the foregoing, the Unit Owners, by the vote of Unit Owners exercising not less than a majority of the voting power of Unit Owners, may, from time to time, change the number and terms of board members, provided that in any such event the terms of not less than one-third (1/3) of the board members shall expire annually.

4.5 Delegation of Authority by Executive Board: Management Contracts. The Executive Board may delegate all or any portion of its authority to discharge its responsibilities to a managing agent. This delegation of authority and responsibility to a managing agent may be evidenced by one or more management contracts which may provide for the payment of reasonable compensation to such managing agent as a common expense, provided, however, that any agreement for professional management shall be terminable by the Association for cause on thirty (30) days' written notice; shall be terminable by either party without cause and without penalty on not more than ninety (90) days' written notice; shall not exceed three (3) year periods, and shall be bona fide and commercially reasonable at the time entered into under the circumstances then prevailing; provided that, in case of any professional management contract entered into before control of the Association is vested in Unit Owners other than Declarant, the contract must give the Association the right to terminate it without cause and without penalty at any time after control of the Association has been transferred to or assumed by Unit Owners other than Declarant. Subject to the foregoing, nothing contained herein shall preclude Declarant or any other entity designated by Declarant, from being employed as managing agent.

The managing agent, or the Executive Board, if there is no managing agent, shall have the authority to enter into contracts with Declarant or an affiliate of Declarant, as defined by an institutional first mortgagee or an agency or organization which purchases and insures first mortgages, for goods, services, or for any other thing, including, without limiting the generality of the foregoing, contracts for the providing of maintenance and repair services, provided the same are bona fide and commercially reasonable to the Unit Owners at the time entered into under the circumstances then prevailing. In any case, no agreement by the Association executed prior to the transfer to or assumption of the Association by Unit Owners other than Declarant shall extend more than one year subsequent to that transfer or assumption of control unless renewed by vote of Unit Owners pursuant to the provisions of the Bylaws.

4.6 Removal of Member/Officer of Executive Board. Notwithstanding any provision of the Bylaws to the contrary, the Unit Owners, by at least sixty-seven percent (67%) vote of all persons present and entitled to vote at any meeting of the Unit Owners at which a quorum is present, may remove any member of the Executive Board with or without cause, other than members appointed by Declarant.

## ARTICLE V

### EASEMENTS

5.1 Easements of Enjoyment; Limitations. Every Unit Owner shall have a right of easement of enjoyment in, over, and upon the Common Elements and an unrestricted right of access to and from his, her, or its Unit, which rights and easements shall be appurtenant to and shall pass with title to a Unit, subject to the right of the Executive Board to make reasonable rules and regulations concerning the use and management of the Common Elements and the Limited Common Elements, provided that no such rule or regulation shall limit or prohibit the right of ingress or egress to a Unit, or any part thereof, or to that Unit's parking facilities. Each

Unit Owner shall be deemed to have delegated that Unit Owner's right of enjoyment to the Common Elements and to ingress and egress to the occupants of that owner's Unit.

5.2 Encroachments. In the event that, by reason of overhangs; or by reason of deviations in construction, reconstruction, rehabilitation, repair, shifting, alteration, improvement or any other movement of the buildings or improvements comprising a part of the property, any part of the Common Elements now or hereafter encroaches upon any part of any Unit, or any part of any Unit now or hereafter encroaches upon any part of the Common Elements, or upon any part of another Unit, an easement for the continued existence and maintenance of each such encroachment is hereby declared and granted and shall continue for so long as each such encroachment exists; provided that in no event shall an easement for such encroachment be created if such encroachment is detrimental to or interferes with the reasonable use and enjoyment of the Common Elements or Units as encroached.

5.3 Easements for Support. Every portion of a building or utility line or any improvement on any portion of the Condominium Property contributing to the support of another building, utility line or improvement on another portion of the Condominium Property shall be burdened with an easement of support for the benefit of all other buildings, utility lines, improvements and other portions of the Condominium Property.

5.4 Easements Through Walls. Easements are hereby declared and granted to the association and to such persons as are authorized by the association, to install, lay, maintain, repair and replace any chutes, flues, ducts, vents, pipes, wires, conduits and other utility installations, and structural components running through the walls of the Units, whether or not such walls lie in whole or in part within the boundaries of any Unit.

5.5 Easements to Repair, Maintain, Restore and Reconstruct. Wherever in, and whenever by, this Declaration, the Bylaws or the Act, a Unit Owner, the association, the board, or any other person, is authorized to enter upon a Unit or the Common Elements to repair, maintain, restore or reconstruct all or any part of a Unit or the Common Elements, such easements as are necessary for such entry and such repair, maintenance, restoration or reconstruction are hereby declared and granted. In the event of an emergency, the Association's right of entry to a Unit and its appurtenant Limited Common Elements may be exercised without notice. Otherwise, the Association shall give the owners or occupants of a Unit no less than twenty-four (24) hours advance notice prior to entering the Unit or its appurtenant Limited Common Elements.

5.6 Declarant's Easement. Declarant hereby reserves such easements through the Common Elements as may be reasonably necessary for the purposes of discharging its obligations, exercising special Declarant rights, and completing the development and construction of the condominium, which easements shall exist as long as reasonably necessary for such purposes.

5.7 Easements for Proper Operations. Easements to the Association shall exist upon, over and under all of the Condominium Property for ingress to and egress from, and the installation, replacing, repairing and maintaining of all utilities, including, but not limited to,

